assume. I believe the position on advertising was that it is still a free country, and it is still a legal product.

With youth, the industry's position was that it did not direct its advertising toward youth you.

Passive smoking, the phrase in quotes is that, if you will forgive me, much more research is needed in that area, really a lot of work to be done there.

- Q. Who did you speak to with respect to the industry not directing its advertising towards youth? Did you say that advertising or marketing, what did you just say?
- A. I said advertising, but the whole ball of wax, advertising, marketing.
  - Q. Who did you speak to about that?
- A. I don't recall ever having spoken to anyone about it. I just said, you asked me what I thought the industry's position was, and that's what I thought the industry position was.

1	Q. And what is that based on?
2	A. From reading statements, I would guess,
3	from The Institute or whatever comments.
4	Q. So based on tobacco. I'm trying to
5	understand on what basis you are saying it was
6	the industry's position not to direct advertising
7	and marketing to youth. One would be
8	MR. KLUGMAN: I don't think that's what
9	he said,
10	Q. Okay. Did I understand you to say that
11	it was your belief that with respect to
12	advertising and youth, it was the industry's
13	position not to direct advertising and marketing
14	to youth?
15	A. Yes.
16	Q. You said you didn't speak to anybody
17	about that, correct?
18	A. I may have, but I don't recall.
19	Q. The basis for that statement that you
20	just made or the belief you have is based on

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what?

ı	A. From probably, I can't be sure, reading
2	the Tobacco Institute's advertising or statement
3	or something like that.
4	Q. On that subject?
5	A. Yes. I believe so, and also my
6	personal belief that it would be pretty damn
7	stupid of them to do something like that, and
8	admit it.
9	Q. Would it be also wrong, as opposed to
10	just being stupid?
11	MR. KLUGMAN: Objection to the form.
12	Objection to the form.
13	A. Well, I wouldn't support anything like

- A. Well, I wouldn't support anything like that. I wouldn't want to do anything like that.
- Q. The next one, stated themes of the conference, under number two:

"Action plans for smoking control which include the following sessions: A, setting nonsmoking policies at athletics sports clubs, schools and elsewhere; B, prevention of smoking, cessation methods, appeals to parent and

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teachers, nonsmoking workplace areas; C, changing
smoking behavior, use of mass media, special
problems in developing countries, less harmful
cigarettes (perhaps leading to nonsmoking),
influencing the public exchange of information
among anti-smoking organizations.

- $\label{eq:A.Well, that's not on my copy, the bottom} \mbox{\sc line.}$
- Q. I think it is picked up on the next page.
  - A. I see. Sorry.
- Q. Anti-smoking organizations, assessing smoking habits, health costs due to smoking.

Do you see that?

A. Yes.

- Q. Was the tobacco industry against the setting of nonsmoking policies at athletic sports clubs, schools and elsewhere?
  - A. I have no idea.
- Q. With respect to prevention of smoking, was the tobacco industry against dessation

methods with respect to parents and teachers?

MR. KLUGMAN: Objection to the form.

No foundation.

- A. Again, I don't know.
- Q. Changing smoking behavior, is it fair to say the tobacco industry was against that, if it led to a reduction in consumption?

MR. KLUGMAN: Objection to the form.

- A. I have no idea.
- Q. This is a document, according to the title, that you authored, correct?

MR. KLUGMAN: Objection. That's not what it says.

Q. Doesn't?

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- A. No. That's not true. I didn't author it. This is a summation of what is in the program, and this is one of the themes that the program had.
- Q. And as articulated in this document that was written by the subcommittee headed by you with Zahn and Finnegan, correct?

1	A. It could have been verbatim out of the
2	program.
3	Q. Headed by Senkus with you and Finnegan?
4	A. It could have been verbatim out of the
5	program.
6	Q. If it was verbatim out of the program
7	of the Fourth World Conference, this is what you
8	were there as a counter measure against,
9	correct?
10	MR. KLUGMAN: Objection to the form.
11	A. I personally?
12	Q. Yes. In your capacity as part of the
13	Task Force.
14	MR. KLUGMAN: Objection to the form.
15	You can answer.
16	A. I am perhaps misunderstanding you.
17	Q. You were there as part of the Task
18	Force to generate counter press release, counter
19	information for public consumption as to what was

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MR. KLUGMAN: Objection to the form.

being presented at the conference, correct?

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Α. Generally -- sorry -- generally, yes. 1 Now, the third stated theme here was: 2 \*Promotion of international collaboration 3 between various anti-smoking organizations." 5 Do you see that? Α. Yes. 6 Now, do you recall a month before the Stockholm World Conference a meeting in Zurich in 9 May of 1979, which was a meeting of ICOSI and the Social Acceptability Working Party and trade 10 associations from around the world, tobacco trade 11 associations? Do you recall that meeting? 12 13 No. I don't. I don't believe I was 14 there. I am not even sure I ever even knew about 15 it. 16 Q. Do you recall who Dennis Durden is? 17 Α. Durden? 18 Q. Yes. RJR? 19 Do you recall Mr. Durden had a position 20

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in ICOSI, at that time, '78/'79?

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## CONFIDENTIAL -- UNDER SEAL 548 1 Α. Vaguely. 2 Do you remember George Berman, who was hired as consultant? 3 Berman? 4 **A** . 5 George Berman, yes. He had been with Philip Morris in the U.S. 6 7 A. Don't recall his name. 8 MR. KRISTAL: Let me mark as an exhibit 9 Mr. Berman's presentation from Zurich and see if 10 this helps you recall whether you were at that meeting. 11 12 VIDEO OPERATOR: Can I go off the 13 record and change tapes while you mark that. . MR. KRISTAL: Sure. 14 VIDEO OPERATOR: Off the record. The 15 16 time is 2:50. 17 (Discussion off the record.) VIDEO OPERATOR: Back on the report, 18 the time is 2:53. 19 20 Q. Exhibit 24 is entitled social costs, 21 social values, by George Berman for ICOSI, and I

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represent to you that Mr. Berman has testified this is the text of his presentation at the Zurich meeting in May of 1979.

The document reads: "Dennis Durden has outlined the major cost thrusts against our industry. Various critics are using a form of economic analysis to come up with an invoice, a bill of smoking costs which are paid for by society."

Do you recall that that was one of the concerns of ICOSI, the costs of smoking regarding health care costs that were being articulated by a number of groups?

- A. Not specifically, no.
- Q. Do you remember generally?
- A. Not even that really, although it would not surprise me.
- Q. Mr. Berman goes on: "It would be pointless to just dispute these documents with similar data, to attack their numbers with our numbers. Instead, our strategy is to attack the

concepts of social cost analysis. We have found that these concepts are most vulnerable. If we can undermine the concepts, we do not have to enter into a public debate over specific numbers.

7.

Our attack consists of four major themes. One, these social cost concepts are bad economics. Two, they do not fit into a philosophy of personal freedom and civil liberty. Three, smoking benefits society and its members in many complex ways. And, four, anti-smoking programs and groups are harmful to society."

Did you ever hear that expressed by anybody in the tobacco industry, the last one, anti-smoking programs and groups are harmful to society?

- A. No, not really. I can't recall.
- Q. Do you recall that any of the programs that were being proposed in the Fourth World Conference that I just read from Appendix One

were in any way harmful to society?

MS. WOODWARD: Objection.

- Q. Cessation methods for parents and teachers, nonsmoking policies at athletic sports clubs, schools, elsewhere, changing smoking behavior, any of those you viewed as being harmful to society?
- A. No, not really, except if you encounter zealots who would really would promote the idea, let's accomplish our goals no matter how we do it. I always thought that was very dangerous to society.
- Q. World Health Organization is not a zealot, or did you believe the World Health Organization falls into the category of zealots as you just defined it?
- A. No. I don't believe so, but certain individuals within the WHO might.
- Q. Like who, I mean are you thinking of somebody?
  - A. No. I'm just speaking.

.	Q. How about the International Union
:	Against Cancer? Is that an zealot anti-smoking
·	organization?
	A. No.
5	Q. The International Union for Health
5	Education, a zealot organization?
.	No. T

- A. Yes. I guess I am, vaguely, I can vaguely recall it. I would say no.
- Q. International Union Against
  Tuberculosis, a zealot anti-smoking group?

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- A. It was against tuberculosis, but with a strong anti-smoking thrust. No, not zealots as all.
  - Q. American Cancer Society?
- A. Sometimes I felt they were a little too zealous in what they were saying and doing, but generally no.
- Q. Anything they did with respect to anti-smoking programs that were harmful to society?

MR. KLUGMAN: Objection to form.

I	Α.	Only	if	it	tried	to	scare	people,
	literally	scare	t)	nem				

- Q. Scare them into stop smoking; is that what you mean, or just scare them like Halloween, ha-ha, that kind of thing?
- A. No. But saying if you continue to smoke you are going to get lung cancer or heart disease.
- Q. So the effort was to get people to stop smoking?
- A. I don't know what the effort was, but it probably was that.
- Q. The U.S. Department of Health,

  Education and Welfare, a zealot with respect to
  anti-smoking?
- A. I don't always trust government agencies.
- Q. Does that mean it was a zealot in your opinion, with respect to anti-smoking efforts or not?
  - A. They could have been, I can't name one.

Q. say you h	Ιf	you	have	no	opinion,	it	is	okay	t c
say you h	nave	no	opinio	on.					

- A. I can give you an opinion based on my life experience that certain people within certain agencies of departments sometimes go against policy or the norm or whatever, and do speak out in a way that could harm the agency or the institution.
- Q. Okay. Are you talking about anybody in particular, with respect to any anti-smoking comments?
  - A. I can't name a name.

(Whereupon, Zahn Deposition Exhibit No. 24, document entitled Social Costs Social Values report, marked.)

Q. Let me give you Exhibit 24, which is the final report of the Fourth World Conference on Smoking and Health.

MR. PADMANABHAN: I think you are on 25.

THE WITNESS: Wait. What is 24?

-	
1	MR. KRISTAL: 24 is the Berman speech.
2	THE WITNESS: I don't have a number on
3	this.
4	MS. WOODWARD: That's not the cover
5	page.
6	MR. KLUGMAN: That's not the cover.
7	(Whereupon, Zahn Exhibit No. 25,
8	final report, was marked for identification.)
9	THE WITNESS: And we are up to 25.
10	Q. And this is the final report of the
11	ICOSI Task Force that you were on with
12	Mr. Hartogh and Mr. Senkus and the others?
13	A. That's what it says, yes.
14	Q. It is dated August 22, 1979?
15	A. Yes.
16	Q. On the first page: "This final report
17	on the Fourth World Conference on Smoking and
18	Health is an appraisal of the implications for
19	the tobacco industry from what transpired at
20	Stockholm.
21	It describes what is likely to happen
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as a result of agreement by leading anti-smoking forces to undertake a joint worldwide campaign against smoking."

Do you see that?

A. Yes.

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Q. You would agree, would you not, that the tobacco industry was very concerned about the growing worldwide coordination of the anti-smoking movement at this time frame?

MR. KLUGMAN: Objection to the form.

- A. I would say so. I would believe so.
- Q. On the second page, introduction: "The Fourth World Conference on Smoking and Health has made three points unmistakenly clear.

One, major anti-tobacco forces are joining in a worldwide war against smoking.

Two, more governments and government-sponsored organizations (national, regional, international) will become involved in anti-smoking activities, activities of those now involved will increase.

And, three, the goal is the eventual elimination of smoking, especially of cigarettes."

Do you see that?

A. Yes.

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- Q. The tobacco industry was certainly against the last goal, fair to say?
  - A. I suppose so.
- Q. Well, that's the bottom line, right, sales of cigarettes?
- A. Well, I could not disagree with it, of course, it would be.
  - Q. Now, do you recall being at this meeting in Stockholm?
    - A. Yes, to a degree.
  - Q. And do you recall generating press releases to counter some of the anti-smoking statements and media coverage that was given to the conference?
  - A. I did not write any press releases. I don't think I wrote anything during the course of

	the	meeting
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- Q. Did you attend any press conferences?
- A. Oh, probably, yeah.
- Q. Did you represent anyone on the tobacco industry side prepare statements for those press conferences?
- A. I may have been asked to look at copy that was written.
  - Q. To edit it or to make comments?
  - A. Or to make suggestions, yeah, yeah.
- Q. Now, do you recall that, well, let's look at major target areas, sixth page of the document, the seventh page. Do you see that?
  - A. I'm sorry, page seven?
  - Q. Yes, sir.
- A. Yes.
  - Q. And this lists the major targets for action fields of the international program; do you see that? Is that what it says, the first paragraph?
    - A. Well, this is socioeconomic aspects.

1	Am I right? Am I looking at it correctly?
2	Q. There are three of them there.
3	MR. KLUGMAN: I'm sorry, what page are
4	you on?
5	MR. KRISTAL: There are four there.
6	Major target areas
7	MR. KLUGMAN: I don't think we have
8	that page?
9	A. You said page seven, I don't have page
10	seven. What page do you have?
11	Q. Ends in 269 of the Bates number.
12	A. Yeah, this has to be page six, I
13	guess.
14	· MR. KLUGMAN: It is page six. The next
15	one is page seven. Go ahead.
16	Q. It lists four areas which are the major
17	target or action fields of the international
18	anti-smoking campaign, does it not?
19	A. Yes.
20	Q. And the first one socioeconomic
21	aspects, and under that it has social
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unacceptability. Do you see that?

A. Yes.

- Q. You were aware, were you not, at that time, that one of the ways that the groups that were trying to reduce smoking consumption was to promote what was called the social unacceptability of smoking?
  - A. I would say so.
- Q. And the tobacco industry was trying to counter that by making statements and devising programs and putting out public relations statements, promoting the acceptability of smoking?

MR. KLUGMAN: Objection to the form.

- A. I don't recall any specific instance of that. It may well have happened.
- Q. Well, did the tobacco companies, to your recollection, respond at all to the social unacceptability arguments?
- A. At this point, at Stockholm, I really don't know.

smoke now,

1	Q. At any point in time?
2	A. I can't recall in any specific case.
3	They may well have.
4	Q. Passive smoking related to secondhand
5	smoke, that's what we call secondhand smoke now
6	correct?
7	A. Yes.
8	Q. And one of the concerns of the tobacc
9	industry at that time was that there might be

the tobacco might be some restrictions in where people could smoke, for example, in a restaurant which would ultimately affect the social acceptability of smoking, was it not?

MR. KLUGMAN: Objection to the form.

- Also in the home, too, I would guess. I would suppose so, yes.
  - The third one listed under socioeconomic aspects is education and cessation programs, do you see that?
    - Α. Yes.

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The tobacco industry was against Q.

education regarding the health risks of smoking,
was it not?

MR. KLUGMAN: Objection to the form.

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- A. I don't know that I could put it in those terms. I suppose it was. I don't know if it ever issued a statement or whatever in that area.
- Q. Well, it certainly was not promoting educational programs with respect to that issue, correct?

MR. KLUGMAN: Objection to form.

- A. Well, I think you are wrong in saying that. I recall the Tobacco Institute undertaking an expensive program aimed directly at youth to urge them not to smoke until they became adults, to wait until they became adults before they would decide whether to smoke.
- Q. First of all, did that relate to smoking and health issues?
- A. Well, why else would there be an education program?

	Q. When do you say this program took
۱ ؛	place?
3	A. I can't give you a time frame. It may
	still be going on, for all I know.
5	Q. Okay. And where did this program take

- place?
- A. It took place in, if I remember correctly, in certain school districts or some educational area.
- know, again, I shouldn't say I know. I believe I am correct in recalling that The Institute did join, oh, I can't recall with whom, but did undertake to support a program to urge or educate young people to wait until they reached adulthood before they decided to smoke or not.
- Q. Have you seen any documents that relate to this program?
- A. I thought there were some newspaper ads. I did see material from The Institute that was mailed to the press, I believe, mailed to the

press. I	got	copies,	but	I	can't	swear	to	it
press. I	ago							

- Q. What happened to your files that you maintained with respect to your tobacco industry consultation?
- A. They were subpoenaed in the Cippolone trial, and I have not seen them since.
- Q. What do you mean \*subpoenaed in the Cippolone trial?
- $\hbox{A.} \qquad \hbox{All my documents were subpoenaed, all} \\$   $\hbox{my files.}$
- Q. Well, they were subpoensed for the deposition, correct, do you recall that?
- A. Well, at the time, I guess the plaintiffs didn't know if I would be called to testify or not. I got a subpoena to surrender all my documents.
- Q. And you gave those documents to the lawyers?
  - A. Yes.

Q. And they copied them, correct?

Ì		
1	<b>A</b> .	I don't know what they did with them.
2	Q.	But at the Cippolone deposition, you
3	testified	that you had gotten the box of
4	documents	back?
5	Α.	Never did.
6	Q.	You never got them back?
7	Α.	No.
8	Q.	Let me show you your testimony in
9	Cippolone	
10	Α.	All right. I may have, but
11	Q.	Let me show it to you first.
12	Α.	Maybe, I'll explain it then.
13	1	MR. KLUGMAN: See what happens.
14	<b>Q</b> .	Yeah, look at pages 16, 17.
15		"Question: They took all of your
16	files?	
17		Answer: All of my business files.
18		What happened next?
19		Not quite sure I know what you mean
20	what happ	ened next.
21		You gave them all of your business
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But at time of Cippolone when you are siting there in December of 1986, these events were clear in your mind at that time, right?

- A. I would guess my mind was a lot better then than it is now, yes.
- Q. And you were talking about with respect to the documents and the boxes and getting them back, about events that had just occurred, not events that had occurred in the fifties or sixties?
- A. Yes. What does my next deposition say about the files? Do you know?
  - Q. No idea.

- A. I'm surprised.
- Q. Surprised I have no idea?
- A. Yes. No, I have no idea what I said, if indeed I was asked abou. it.
- Q. I'm just saying I don't recall anything. You may not have been asked.
- A. But it may be that I got them back, and then they were turned over to the lawyers, the

	packing	company	came	and	took	cnem	away
2	Q.	Took	them .	away	agair	<b>.</b>	

- A. I thought when they were gone the first time, that was the only time.
- Q. When was the last time you saw your documents?
- A. The first time I saw them. If they did come back to me, I did not look at them, they were wrapped.
- Q. But you testified in Cippolone, they had come back and you hadn't opened the boxes yet?
- A. That may well have been true. I don't remember that, though.
- Q. Okay. No reason as you sit here today that that testimony was not accurate in Cippolone?
  - A. No.

Q. The cessation programs that were one of the proposals of the international program, smoking cessation programs was something the

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tobacco industry was against, correct?

- A. I would suppose so.
- And economic costs, do you recall any discussion about who is paying the health costs of tobacco related diseases as being an issue at that time?

MR. KLUGMAN: Any discussion with anybody, you are not talking about in this context?

MR. KRISTAL: Yes.

I do recall reading something in this area, not at that time, it could have been at that time, but I have seen it a number of times, probably before then and since then, and the reason that sticks in my mind is some people were saying, including some anti-smokers, anti-smoking activists that smokers die too soon to collect Social Security and that provides a huge sum of money that is being saved.

Now, I don't know whether I agree with that or anything, but I have read that sort of

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## CONFIDENTIAL -- UNDER SEAL 570 thing a number of times. 1 2 So what you are saying is, in fact, it is good that people are dying young of smoking 3 diseases from an economic sense? A. Oh, now, that's unfair. 5 Isn't that what you just said? 7 MR. PADMANABHAN: Object to the form. 9 No. Α. Isn't that the bottom line of what you 9 1 C just said? No, it is not. It is not. It is not. 11 Α. MR. KLUGMAN: Hold on, Jerry. 12 13 THE WITNESS: Why belittle what you know is a stupid point? 14 15 MR. KRISTAL: Why did you make it? 16 MR. KLUGMAN: You're arguing with him. I think it's improper. That's not the point he 17 made. 18 MR. PADMANABHAN: He didn't. 19 20 MR. KLUGMAN: He said he read that 21 point in the papers.

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1	Q. You have read that point in the paper?
2	A. Yes. I have.
3	Q. That, in fact, it is a savings for the
4	economy, if people die young from cigarette
5	smoking. Is that what you have read in the
6	papers?
7	MR. KLUGMAN: Objection.
8	A. The actual fact of it or whether I
9	believe, that it should be that way?
10	Q. First of all I'm asking you, if that's
11	what you are referring to? Is that what you read
12	in the paper?
13	A. I have read that, yes. Yeah.
14	Q. Have you ever read anything that says,
15	in fact, smoking medical costs cost society
16	money?
17	A. Yes.
18	Q. In that context, the costs to society
19	from smoking diseases, is it fair to say that the

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tobacco industry position was as long as we, the

industry, are not paying for it, the costs are

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1 okay where they are?

MR. KLUGMAN: Objection to the form.

Argumentative, no foundation, go ahead.

- A. I have no idea.
- Q. Did you ever at any point in time in your work with anyone involved in the tobacco industry, discuss my client's health and welfare trust funds and who was bearing the costs of tobacco-related diseases?
- A. I didn't even know your client existed really.

MR. KLUGMAN: Do you know who his client is?

THE WITNESS: I'm not even sure who your client is now.

MR. KLUGMAN: Object to the form. I don't know why he would have any idea who it is. But he's answered the question.

Q. The document continues in the next paragraph, and this is the Task Force that you were on, right, the report of the Task Force?"

A. How many times must you ask me that? I will certify now that my name was listed as a member of this group, and it will not change today. It has not changed since the memo was made.

Q. "It should be emphasized that the health charges will remain a basic and powerful weapon in the arsenal of the anti-tobacco forces. Their theme is familiar. There can be no serious debate over the adverse health effects of smoking.

Medical and scientific research has proven that smoking causes various major diseases (lung cancer, heart disease, chronic pulmonary ailments, et cetera) no further research is really necessary."

Did you understand that to be the position of the groups such as the World Health Organization, International Union Against Cancer, American Cancer Society, U.S. Department of Health, Education and Welfare? Did you

vague and compound.  A. Generally so, yes.  Q. And the tobacco industry's position  180 degrees opposite that, which is further  research is necessary to answer those question  MR. KLUGMAN: Objection to the form.  A. Essentially, yes.  (Whereupon, Zahn Exhibit No. 26  letter from Hartogh to Shinn dated May 15, 197  was marked for identification.)  Q. Do you recall various position paper that were written by ICOSI that were distribut to yourself and others on various smoking and health related issues.		
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Let me show you this, and maybe this	15	to yourself and others on various smoking and
	16	health related issues.
will help you remember. Maybe not.	17	Let me show you this, and maybe this
II.	18	will help you remember. Maybe not.

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from Jules Hartogh to Bill, and it is ICOSI Task

Force coverage of Fourth World Conference on

Exhibit 26 is a letter of May 15, 1979,

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Smoking and Health, ICOSI background and briefing papers. And it references --

MR. KLUGMAN: Can I see a copy?

MR. KRISTAL: I think I have an extra copy. You can have this.

Q. It reads: "Dear Bill, we discussed arrangements at our April 20th meeting in Brussels, whereby I would have in my hands by May 1st, copies of the papers from Murray Senkus' subgroup, so that I could forward them to all members of the Task Force for their approval before we reproduce them for distribution to the National Manufacturers Associations at the Zurich meeting, beginning this weekend."

Do you see that?

A. Yes.

- Q. The Zurich meeting was the one where I showed you the presentation by Mr. Berman in 1979, May. Do you recall that?
- A. You mean that these subjects existed in the form of papers? I do recall meeting with

Murray Senkus	
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- Q. In New York?
- A. I don't remember where. I don't even remember when. Was Finnegan there? I don't know. I can't recall. And working on some documents.
  - Q. Okay.
- A. And I remember, I think I remember that Senkus suddenly became a writer. Maybe he was, but he was the client, in effect, and how much he prevailed, I don't know; how much I prevailed in terms of literary output, I don't recall.
  - Q. Okay.
- A. But I did work on some papers. They may well have been these titles here. I just don't remember.
- Q. You are listed as being on the distribution list, correct?
- A. Well, let me look inside. Yeah, I obviously did get this.
  - MR. KRISTAL: If you would look at

Exhibit 27, maybe this will help you recall. The minutes of the Brussels meeting referenced in the first paragraph here.

(Whereupon, Zahn Deposition

(Whereupon, Zahn Deposition Exhibit No. 27, minutes of meeting of April 20, 1979, marked.)

- Q. These are ICOSI Task Force, coverage of Fourth World Conference on Smoking and Health, minutes of meeting, April 20, 1979, in Brussels.

  Do you see that?
  - A. Yes.

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- Q. And the first paragraph of Exhibit 26, the May 15, 1979, references an April 20th meeting in Brussels, correct?
- A. I'm sorry, would you say that again? I'm not following you.
  - Q. The May 15, 1979 letter, right?
- A. Yes.
- Q. References an April 20th meeting; does it not?
  - A. Yes.

- Q. And Exhibit 27 are minutes from the April 20th meeting?
  - A. Okay, yes, right.

Q. Okay. If you will look at the last page of Exhibit 27 at the bottom, I'm sorry, it is the next to the last page. It talks about background briefing papers. Do you see that?

And down at the bottom it says:
"Arrangement were made so that Dr. Senkus and
Mr. Zahn would meet in New York to work on these
papers, which they would send to Mr. Hoel for
checking and for which they would make
arrangements to have them sent to Mr. Hartogh to
arrive May 1st.

Do you recall that you worked with Mr. Senkus in the position papers?

- A. As I mentioned a few minutes ago.
- Q. The position papers that are mentioned in Mr. Hartogh's letter are entitled "Smoking and Health a Perspective."

Do you see that?

industry's viewpoint.

Q. Okay.

Force, marked.)

- A. In as positive a way as possible.

  (Whereupon, Zahn Deposition

  Exhibit No. 28, memo from wells to ICOSI Task
- Q. Now, if you will look at Exhibit 28, it is a letter from the next month, June of 1979, from do you recall Tara Wells who worked with Mr. Hartogh?
  - A. Oh, yes.
- Q. I won't get into that from the tone of your voice.
- A. Oh. No. I haven't thought of her in decades, it seems.
  - Q. She is now sending a letter June 11, 1979, to all members of the ICOSI Task Force, Fourth WCSH, and she is enclosing additional position papers, one on chronic obstructive lung disease, one on the effect of warning labels on cigarette use is questionable, one on taxation

and cigarette use, and one is response to some allegations found in the report of the WHO Expert Committee on Smoking Control released on May 24, 1979.

Do you recall working on any or all of these position papers?

- A. No. I do not. Certainly, I would not have been involved in the taxation one. The other three, I just don't remember.
- Q. Okay. Do you recall during the actual conference at Stockholm sending various communique back to the different national manufacturer associations reporting on what was going on in that day's events?
- A. Well, as you mention it, yeah, I recall that that was done.
- Q. Was that in an effort so that the national associations in their own countries could develop whatever public position they deemed appropriate, with respect to any publicity coming out of Stockholm?

1	MR. KLUGMAN: Objection to the form.
2	A. I cannot recall specifically, but that
3	would not surprise me. Certainly, at the very
4	least, it was to keep these organizations
5	informed of what was happening.
6	MR. KRISTAL: Mr. Zahn, at this time, I
7.	have no further questions.
8	MR. KLUGMAN: Thank you. You want to
9	take a short break?
10	THE WITNESS: Yeah.
11	VIDEO OPERATOR: Off the record, the
12	time is 3:22.
13	(Break.)
14	VIDEO OPERATOR: Go back on the
15	record The time is 3:35.
16	EXAMINATION BY MR. KLUGMAN:
17	Q. Something afternoon, Mr. Zahn.
18	A. Good afternoon.
19	Q. As you know, I'm Steve Klugman from
20	Debevoise & Plimpton, and I would like to ask you
21	some questions about some of the work you have

done and some of the things you have been asked about earlier in the deposition, but let me talk to you first, ask you some questions first about yourself.

Where do you live?

A. I live in [DELETED]

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- Q. We don't know who will be looking at this. Can you tell us where that is?
- A. It is where we are having this disposition, deposition, and maybe a disposition as well.
- Q. And that's a suburb of New York City, [DELETED]
- A. No. It is the first city or community, it is not a city, it is the first community out of New York City at the Queens line.
- Q. And how long have you lived in Great Neck?
  - A. 32 years.
  - Q. Are you employed right now, Mr. Zahn?
  - A. No. I am not.

1	Q. Are you retired?
2	A. Yes.
3	Q. For about how long have you been
4	retired?
5	A. About four years, I would say.
6	Q. What was your career before you
7	retired, the last four years?
8	A. My working career?
9	Q. Yeah, what business career did you
0	have, what line of work were you in?
1	A. Well, I started after graduating from
2	college as a correspondent for United Press.
3	That was the title given to all the newsmen
4	there. Actually, my last title was as night
. 5	manager of the Boston bureau.
6	And from there, I went to work in New
. 7	York for a large public relations agency, Cark
. 8	Byoir, B-y-o-i-r, & Associates.
9	And then from there in, I quess, 1955.

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I went to work for what was perhaps the largest

public relations firm or number two maybe behind

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Byoir at that time, Hill & Knowlton, K-n-o-w-l-t-o-n.

In 1969, I resigned from Hill & Knowlton and opened my own public relations agency, Leonard Zahn & Associates, Incorporated.

- Q. So for how long altogether were you in the public relations field before you retired?
- A. From '51 to '94, 43, 44 years, roughly that time. Also, in the last 25 years or 30 years of my working career, I did a great amount of freelance science writing.
- Q. And that was work you did at the same time you remained active in public relations?
  - A. Yes.
- Q. I don't know if you would be sensitive about this or not, but as I say, we don't know who is going to see these depositions or when.

  It is December 16, 1998. How old a man are you right now?
  - A. I am 75. I was 75 last June.
  - Q. Okay. You talked about, told us a

little bit about your career in public relations and science writing, after you graduated from college.

Could you tell us a little bit about your background before then, where you are from, where you grew up, and what you did before?

MR. KRISTAL: Let me just lodge an objection, and you can answer whatever you want along these lines. These virtual questions were asked, we had many pages of the transcript in the first deposition, but you can use your time as you see fit.

So I don't know if I have to state the objection, but if I do, these have all been asked and answered.

A. I was born and grew up in the Boston area. I attended Boston Latin School, something of which I am quite proud. It is a very unique junior high and high school.

I served in the U.S. Army, the Army Air Corps, during the war from roughly '42 to '46.

about three and a half years, I would say, about 22 months, if I remember correctly, overseas in the South Pacific.

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When the war ended, I went back to college and I graduated in 1948 from the University of Massachusetts.

I got married in my senior year, and a day after graduation from school, I went to work for United Press. And you have the rest of it.

One thing I might add, while living here in [DELETED]—there are nine villages here, I live in one of them, Thomason, and I have served the government of that village as a trustee, deputy mayor, mayor for a long while, and am a member of the board of appeals, zoning appeals, and it is only in the last two or three years that I have stopped doing anything, any work for the village.

Q. All right. So you told us you started with United Press. Since then have you had any other employers besides the ones you mentioned a

few minutes ago, the Byoir and the	Hill &
Knowlton public relations agencies	and your own
public relations firm?	

A. No.

- Q. Have you ever been an employee of a tobacco company?
  - A. No.
- Q. Were you ever an employee of the Council for Tobacco Research, which I think you know is also a defendant in some of these cases?
  - A. No. I have not.
- Q. Have you ever been an employee of the 'Tobacco Institute, another defendant?
  - A. No.
- Q. During your career, as a public relations person, a science writer, did you ever provide any services to any of the companies we have been talking about, that is the CTR, the Tobacco Institute or tobacco companies?
- MR. KRISTAL: Is there a purpose of this? We have all of these questions, almost the

exact questions and answers. All I'm saying is if there is a time consideration here, we fully expect to take as much time as we need when you get to the real redirect.

MR. KLUGMAN: Thanks.

MR. KRISTAL: I'm just warning you, I am trying to accommodate you for your time. If this is how you want to do this, that's fine. Nobody is going to cut me off later.

A. Yes.

Q. I can't remember what the question was.

MR. KRISTAL: The question was whether he worked for CTR at any point in time?

A. No. It was have I provided services to any of these organizations or companies or whatever.

MR. KRISTAL: That's what we've been here for two days talking about.

Q. During what period of time did you provide services to the Council for Tobacco

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- A. As Leonard Zahn & Associates, from 1969 to 1994.
- Q. Did you provide those services before that, as an employee of Hill & Knowlton?
  - A. Yes.
  - Q. During what period, approximately?
- A. Well, approximately from 1955, to 1969, the last few years just on a part-time basis.
- Q. So just quickly if you can do the arithmetic, for about how many years did you provide public relations services to CTR, either as an employee of Hill & Knowlton or with your on firm?
- A. 1955 to 1994, 55 and 40, roughly 40 years.
  - Q. Close to 40 years.
  - A. 39 years, 40 years.
- Q. Were you involved in any way in the creation of the Tobacco Industry Research Committee?

A. No. I was not.

- Q. Did you, back in January, 1994, see the newspaper item, the Frank Statement to digarette smokers that appeared in a number of newspapers?
  - A. Not in '94.
  - Q. I'm sorry. 1954. Did you see this?
- A. If I did see it at the time it appeared, I don't remember having done it. But I did see it when I went to work, at Hill & Knowlton.
- Q. Could you describe generally the kinds of services that you provided to CTR as an employee of Hill & Knowlton and with your own firm during this roughly 40-year period that you talked about from 1954 to 1994, just as a general matter?
- A. The foll range of public relations services, starting with advising and counseling the client in certain matters, taking care of dealing with the media on behalf of the client and performing any functions that required the

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No. I was not. Α.

Did you, back in January, 1994, see the newspaper item, the Frank Statement to cigarette smokers that appeared in a number of newspapers?

- Not in '94.
- I'm sorry. 1954. Did you see this?
- If I did see it at the time it appeared, I don't remember having done it. But I did see it when I went to work, at Hill & Knowlton.
- Could you describe generally the kinds of services that you provided to CTR as an employee of Hill & Knowlton and with your own firm during this roughly 40-year period that you talked about from 1954 to 1994, just as a general matter?
- The full range of public relations services, starting with advising and counseling the client in certain matters, taking care of dealing with the media on behalf of the client and performing any functions that required the

client someho	to	be	in	the	public	eye	or	to	become
someho	w ir	th	e r	oubli	ic eve.				

- Q. Was there, well, let's say, during the time you provided services to CTR, was there anyone besides Hill & Knowlton, and then later your company, that was providing public relations services to CTR, so far as you know?
  - A. Not that I know of.
- Q. While you are doing or providing some services to CTR, did you ever meet someone named Dr. Brady?
  - A. Yes.

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- Q. Who was Dr. Brady?
- A. He was an Associate Scientific Director.
  - Q. What was his full name?
- A. J. Jack, I don't know whether the J. was for Jack, Jack Brady, James Morrison Brady.
  - Q. He was a scientist or medical person?
  - A. Was he medical doctor, yes.
  - Q. What did he do at CTR, like what kind

of work did he do?

A. Well, he attended a number of medical meetings, talking to doctors, I gather, about CTR.

MR. KRISTAL: Objection, foundation

- A. When --
- Q. What was his job, that's really what I'm looking for, I'm not trying to get a detailed description.
- A. I guess he served as a liaison of some sort with physicians, and also to see if scientists who were interested in applying for grants, research grants, from the Council, and he did spend several years with the CTR exhibit that was presented at a number of scientific meetings.
- Q. To people who might be interested in applying for grants?
  - A. Yes.

MR. KRISTAL: Objection. Leading.

Q. To the best of your knowledge, did

Dr. Brady have a background in public relations?

1	A. No, not really.
2	Q. Did he work with you, or others at Hill
3	& Knowlton, to your knowledge, in terms of doing
4	public relations work and providing public
5	relations work to CTR?
6	A. Not that I'm aware of.
7	MR. KLUGMAN: Let me ask you this: Take
8	a look at the document I'm going to mark as, keep
9	these serial, and make this Exhibit 29.
10	Is that all right with everybody?
11	MR. KRISTAL: Sure.
12	(Discussion off the record.)
13	Q. Exhibit 29 is a two-page document, the
14	first page has HK0039151.
15	A. Yes.
16	Q. Did you ever see that document before
17	your retirement?
18	A. No.
19	Q. In the early nineties?
20	A. No.
21	Q. Have you seen it since then in

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20 21 connection with your depositions?

- Yes. I forget at which deposition, but maybe it was the one, December 1, I don't know, but I saw it for the first time then. I believe that was the first time I saw it.
- Q. In this memo, Dr. Brady, on the second page, states: "It would appear that the following suggestions might be considered."

Do you see that at the top of the second page?

- Α. Yes.
- Q. And then he lists some suggestions?
- Α. Yes.
- And do you know whether any of those suggestions was adopted by CTR? Let me take a step back, and say, because I think we have in other depositions, I'm going to use the term CTR to refer to both the Council for Tobacco Research, and the Tobacco Industry Research Committee?
  - A. Uh-huh.

1	Q. But lumping those together, to the best
2	of your knowledge
3	A. Of course, TIRC or CTR's budget was
4	increased, but not because of this memo. I mean
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Each year, almost each year, as I recall, there was a fairly substantial increase in the amount of dollars available.

- Q. At the time of this memo, 1962, who were you working for? Who was your employer?
  - A. Hill & Knowlton.

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guess.

- Q. And were you assigned at that time to the CTR, TIRC account?
  - A. Pretty much full time, yes.
- Q. Did anybody ever discuss with you the proposals made in this memorandum that we have marked as Exhibit 27? 28?

MR. KRISTAL: 29.

THE WITNESS: Exhibit 29.

- 1	
1	Q. Sorry. Exhibit 29. Now that we have
2	gotten over that, anybody ever talk about these
3	suggestions with you?
4	A. Well, I certainly didn't see this at
5	that time, and I can't recall ever having
6	discussed some of the things which are listed

- Q. Now, you said before that at some point, you left the Hill & Knowlton firm.
  - A. Yes.

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- Q. What was the name of the firm that you started at that time?
  - A. Leonard Zahn & Associates, 1969.
- Q. How many principal employees did Leonard Zahn & Associates have?
- A. At first, just myself, and then later on, I can't recall when, but it probably was at a time when both my daughters were away at college. My wife went to work. Maybe she had not yet graduated. She went become to school, and got her degree. I can't remember when, but

1	she	did	join	me
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- Q. And for about how long did Leonard Zann & Associates provide services to CTR, public relations services?
  - A. About 25 years.
- Q. And did your company, Leonard Zahn & Associates, provide services to any other companies, did it have other accounts at that time?
  - A. · Yes.
- Q. Did it have accounts outside the tobacco industry?
  - A. Yes.
- Q. And you have told us before that your company did a limited amount of work for the Tobacco Institute; is that right?
- A. Leonard Zahn & Associates did only, that I can recall, one, conducted one project for the Tobacco Institute for which it was paid, and I can't recall anything else.

It was interviewing a scientist and

then writing an article on it for a Tobacco
Institute publication.

- Q. And you said you did some work for Philip Morris in Europe; is that right?
  - A Yes

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- Q. And Mr. Kristal showed you some documents about a conference that you covered for an organization called ICOSI; is that an additional assignment or did you consider that the work for Philip Morris?
- A. Well, I'm trying to remember. I don't even know who paid me, was it ICOSI or Philip Morris Europe? I really can't recall. I just don't remember. It would have been directly for ICOSI, whatever mechanism they wanted followed, I don't know.
- Q. During the 25 years that you had your own public relations firm, was anybody else in the tobacco industry that you had as a client you rendered services to, that you can recall?
  - A. I'm forgetting. There was a tobacco

publication in the merchandising area.

Now, I did work for it, I remember the owner's name, Tiny Weintraub, obviously called Tiny because he was a great big fat guy. I think his name was Morris.

And I got involved with him. I did something for the Tobacco Tax Institute when I was a Hill & Knowlton employee, and that is how I met Mr. Weintraub, and then he wanted me to do some writing for him on tobacco merchandising or whatever or take material he gave me and write some articles for his publication. I think it was a monthly magazine.

And I did that. Now, whether I continued to do that after 1969, in my own business, I frankly don't recall.

Q. During your decades of providing public relations services to CTR, including the time you were with Hill & Knowlton, did you become familiar with CTR's research grant in aid program?

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Could you tell us a little bit about Q. how that program worked?

Well, basically, it worked with a scientist sending in an application, an application that was similar to what most granting agencies used, including NIH, the American Cancer Society, and so forth, and the application would be screened by the scientific staff, assigned by the Scientific Director, perhaps, to a subcommittee of the Advisory Board.

If there were deficiencies in the application or unanswered, or points that were unclear, whatever, the staff would return the --I'm going into probably minutia I don't need to.

If the application was okay, it would be brought before the or would go before a subcommittee of the Scientific Advisory Board and would be brought up at the next available screening meeting of the Advisory Board.

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The members would discuss it for relevance and merit. If it got a high enough score, it would be funded, a procedure that is followed by virtually every granting agency in the country.

- Q. Mr. Zahn, did you have any input into which grant applications were funded by CTR?
  - A. No.

7.

written?

Q. Mr. Kristal showed you some documents, and I ask you to take a quick look at one in particular.

That's marked Plaintiff's Exhibit
20,339. We don't need to mark it again. Do you
recall that document? It is a memo from you to
Mr. Ramm, headed research project suggestions?

MR. KRISTAL: Do you mean does he recall
it from this morning or rom when it was

 $\label{eq:mr.klugman:from when it was} \mbox{written.}$ 

A. No. I do remember having written

something along this line, I thought I had written more of them. But I would not be surprised to learn, if it were at all possible, that I had discussed this in advance with Henry Ramm and he said, well, why don't you put it on paper. He was that kind of man.

- Q. And do you know what happened to this memo and, perhaps, others, after you put your ideas on paper?
- A.. Oh, it went the way of many great ideas. It disappeared, although some people may have had some comments on them. But I just don't know of anything that was done with this.
- Q. To the best of your knowledge, did any of your recommendations for scientific research become funded by CTR?
- A. Yes. I would guess a number of these, in these areas, were funded by CTR, but not because of this memo.
- Q. That's what I mean. Any connection between --

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- A. No, no connection whatsoever.

  Q. Let me just finish question.
  - A. I'm sorry.
  - Q. Do you know of any connection between anything that you proposed and any decisions by CTR to fund research?
    - A. No.

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- Q. Mr. Zahn, you spent over 40 years in the field of public relations?
  - A. Yes.
- Q. Based on your long years of experience in that field, can you give us a quick, general definition of public relations?
  - MR. KRISTAL: Objection.
- MR. KLUGMAN: Can I get the basis of the of the objection?
- MR. KRISTAL: Are you establishing him
  as an expert in the area of public relations?
  - MR. KLUGMAN: I'm asking him to explain what public relations is. I don't think that's expert testimony from somebody who's been doing

it for fifty years.

 $$\operatorname{MR}$.$  KRISTAL: He can certainly testify about what he did.

Q. Just tell us what public relations is, based upon your past?

MR. KRISTAL: Objection.

- A. A simple explanation I like to use is doing good and telling about it.
- Q. And can you explain a little bit more about what that means?
- A. Well, if you have a program that you think is worthwhile, that benefit may come of itto those you are seeking to reach, as well as the sponsor, the client, in effect, and then talking about it, there is no reason why you should not talk about it, to gain support for your client.
- Q. What are some of the types of organizations, over the last 40 or 50 years, that you have objected that engage in public relations activities?

MR. KRISTAL: Objection.

A. There is scarcely no organization, no institution, no industry, no company, no nonprofit organization that does not involve in public relations in one fashion or another.

- Q. How about research, funding organizations, have you observed that they do or do not have public relations activities?
- A. Oh, they absolutely depend on it, because organizations like the Cancer Society, the American Heart Association, American Lung Association, they could not live without donations from the public.

And you can only inform the public through the mass media. So they have very active, very extensive public relations programs, whatever they call it, it is still public relations.

- Q. How about universities and hospitals?
- A. Same thing. Same thing.
- Q. Go ahead, I'm sorry.
- A. Whether they are profit or not for

profit.

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Q. During the years while you were providing public relations services to CTR, did you believe the definition or did you have a view one way or the other as to whether -- let me strike that and start over again.

You gave us a definition of public relations a few minutes ago about doing good and talking about it, telling about it. I get that right?

- A. Yes.
- Q. During the years, while you were providing public relations services to CTR, did you think you were acting in accordance with that definition?
- A. Oh, I was, although I was limited. I mean I could not carry on an extensive public relations program, because the tobacco industry, tobacco as a whole, was a dirty word, became a dirty word, in many areas, and I guess it would have been impossible to crack that sort of

audience that you were facing.

- Q. I want to go back to the beginning of that answer, in which I thought, and I may have misheard or misunderstood you, you said that within limitations or up to a point, something like that, you did provide services in accordance with the definition you gave us?
- A. Oh, yes.
  - MR. KRISTAL: Objection.
  - A. Absolutely.
  - Q. Can you explain what you meant by that, how that was?
  - A. Well, I issued releases when news releases, when scientists were given research funds to investigate certain research projects, when CTR's sponsorship of the massive mouse study at Microbiological As,ociates came to an end, I issued a press release and tried to promote news attention to it, things of that kind. Whenever anything positive was done, I tried to exploit it.

	Q.	Jus	st to	make	sure	that	we un	derst	and,
what	was	the	good	from	n your	defi	nition	that	you
were	, tha	at wa	as be	ing o	done a	nd th	at you	were	
talk	ing a	about	:, du	ring	the p	eriod	that	you	
rend	ered	serv	vices	to	CTR?				

A. Well, it may sound self-serving, take the MAI study of mouse inhalation work, it sort of denied the claims that had been made about smoke inhalation causing lung cancer, not entirely, but to a fairly large degree, I would guess, not that it was accepted as such, but it did show that.

And was this protecting the industry, defending the industry? I suppose you could say so.

But, on the other hand, here was a major scientific study done by reputable scientists at a reputable organization, finding that, reporting that smoke inhalation did not, in these animals, produce lung cancer and, you know, certain interesting, if not strange, results came

about, that some controls, if I remember correctly, got more lung cancer than smoking animals.

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I mean how do you explain these things? I have no answers. I can't explain it, that sort of thing.

- Q. Let me go back to my question and ask you if you can tell me more generally what the nature of the good that you were talking about in serving the public relations function was?
- A. Well, you are trying to inform the public out there. The industry kept being accused, as it is to this day, about the great dangers of cigarette smoking, and there probably are many of them, but here is a study that at least in animals presented some evidence on what can only be described as the other side of the fence.

And does the public have a right to know that? I certainly thought so.

Q. Were you familiar with the Tobacco

1 | Institute?

- A. Yes.
- Q. Were you familiar with the press releases that it issued from time to time, did you see those?

MR. KRISTAL: Objection. . . .

- A. Yes. I'm sure I saw all of them or most of them.
- Q. From your perspective as public relations counsel to CTR, did the public relations function of the Tobacco Institute differ from the public relations function of CTR?
  - A. Yes.
  - Q. Will you explain how?
- A. Well, while I was looking for broad public support or understanding and looking for the broad public as an audience reachable to through the media, it also was trying to deal with the medical community and, particularly, with a federal or governmental community, from

Congress on down to regulatory agencies, areas that CTR would never, could never get involved with.

So some of its efforts were highly directed or highly specialized in the public relations area.

- Q. How would you compare the scope of the public relations effort by the Tobacco Institute on one hand and the public relations efforts by CTR on the other hand?
  - A. Oh, much larger.

- Q. Which was much larger?
- A. The Institute's.
- Q. While we're on the subject of the Tobacco Institute, to the best of your knowledge, did the Tobacco Institute have any input into the research funding activities of CTR?

MR. KRISTAL: Objection, foundation.

- A. I was not aware of any.
- Q. During the decades while you were providing public relations services to CTR, did

you consider your efforts to be an effort to 2 promote smoking?

> No, not at all. Α.

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- During the time you were providing those services to CTR, was there an overall message about CTR that you were trying to present?
  - Oh, absolutely.
  - And what was that message?
- That this research program was an effort to answer the same old phrase, the many unanswered questions that existed in regard to smoking and health, and that it would continue to support scientists and give them total freedom in doing their work until these questions were answered, if, indeed, they could ever be fully, but, certainly to a much greater degree than existed.
- During all the years that you provided public relations services to CTR, do you believe you acted ethically?

1	A. Absolutely.
2	Q. During that entire period of time,
3	while you were providing services to CTR, is it
4	your belief that you ever deceived anybody?
5	A. No.
6	Q. And is it your belief during all those
7	years that CTR deceived anybody?
8	A. Not to my knowledge.
9	Q. Is it your belief that you helped CTR
10	to deceive anybody during all that time?
11	A. No, never.
12	Q. During this long period of time when
13	you were providing public relations services to
14	CTR, did you discuss CTR and again I'm
15	including TIRC, when I say CTR with people in
16	the media, the mass media?
17	A. Oh, yes.
18	Q. And did you do that with some
19	frequency?
20	A. Yes, particularly in the earlier years.
21	Q. And during this long period of time,

did you discuss CTR with research scientists?

A. Well, yes, on occasions.

Q. And based on the discussions you had and what you saw, did you ever evaluate the success of your efforts in getting across the message of what CTR was doing in its research effort?

MR. KRISTAL: Objection, foundation.

- A. No. I didn't, only in one time, that was, well, no, that wouldn't apply to what you said.
- No, on the contrary, I think to this . day, people in the media whom I have known for 30 years, probably still think that I was working mostly for the Tobacco Institute, even though I have probably talked with each one of them 25 times at a minimum about CTR.
- Q. Well, on that basis, on the basis of those discussions, did you form any assessment as to whether your message of what CTR was and what it did had gotten across to them?

MR. KRISTAL: Objection, foundation.

- A. Oh, I think they knew what it did, even though they thought it might have been The Institute at times. But, frankly, it had no effect on a number of them. I have had newsmen whom I know well for a long time tell me, Len, I would never write and print a story that was favorable to tobacco, regardless of what it was.
- Q. In discussing CTR with people in the news media or with scientists, did you ever encounter any confusion or uncertainty as to whether CTR was affiliated with tobacco companies?

MR. KRISTAL: Objection. Compound.

- A. They all knew that the source of the money came from the tobacco companies, the money used to fund the scientists, the research scientists.
- Q. Mr. Kristal asked you some questions earlier, and I am going to ask you a few additional questions about press releases that

were issued on by or on behalf of CTR.

First of all, while you were with Hill & Knowlton, and working on the TIRC or CTR account, did TIRC and CTR issue press releases or did Hill & Knowlton issue them on its behalf?

MR. KRISTAL: Objection.

A. I think it may have been a combination of both with TIRC. You know, I can't really recall. I know we did issue, especially in the early years, press releases quoting Mr. Hartnet or even Dr. Little as time went on, responding to the certain reports, research reports that were described in the popular world press, newspapers, magazines, radio, and what television there was of the day.

Most of them probably came from, under Hill & Knowlton's letterhead or news release form, but perhaps not all, but really, yes, Hill & Knowlton would have handled every release anyway, so I am perhaps being too picky or too detailed. And I did the same thing with CTR. I

think they all came from my company.

- Q. That's after 1969?
- A. Yeah.

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- Q. While you were with Hill & Knowlton, were you personally involved in the preparation of any CTR press releases?
- A. Well, in the beginning, of course, I was a beginner. But I would say I had a hand in most of them, if not the original draft, the rewrite, whatever, but I participated in the. I guess, most of them, certainly.
- Q. Is the issuance of press releases something that public relations firms do?
  - A. Oh, yeah, absolutely.
  - Q. That's not an unusual activity?
- A. Not at all. It is an accepted and expected service that you provide a client, if the client wants it.
- Q. You were describing a couple of minutes ago some examples or kinds of press releases that CTR or TIRC issued, in, I think you said, the

early days.

During your time providing public relations services to CTR from the mid fifties to the mid nineties, did the frequency or the nature of its press releases change?

- A. Yes. The --
- Q. Can you tell us a little bit about that?
- A. The frequency diminished remarkably for CTR, even before I left Hill & Knowlton.

The policy became that CTR would not, in most circumstances, comment on a scientific report linking smoking with disease in one way cranother. That fell to the Tobacco Institute to do, if it so desired.

When I became CTR's public relations counsel in 1969, it was a trand that continued. The releases got fewer and fewer, and after a while, they ended up being only on the grants that were approved at the SAB meetings, and on the annual report there was one that I was made

aware of today that I have no recollection of the release marking the 25th anniversary of CTR.

There was one on the Microbiological Associates project. I can't recall any other subject that I would have covered, that I did cover in a release.

- Q. How about the frequency of the releases during, let's say, your last 20 years, the mid seventies to the mid nineties, can you estimate how often a press release was issued by CTR during that period?
- A. Twice yearly, virtually, for the most part. On the average, I would say it would be three times a year.
  - Q. Let me ask --

A. There were some years when I did not do a release on both grant approval meetings or grant decision meetings of the Advisory Board.

MR. KLUGMAN: Let me ask you to take a look at what I have marked as Exhibit 30. It is a one-page letter from Mr. Ramm to Mr. Smith.

(Whereupon, Zahn Deposition
Exhibit No. 30, letter from Ramm to Smith, dated
Marcy 6. 1974. marked.)

Q. It has marked ZN22615, and we talked about that last time, but that ZN means it came from your file.

Do you recall seeing this document, Mr. Zahn?

- A. I may have I'm having difficulty reading it, because so many of the letters are imperfect.
- Q. Let me ask you to take a look at a portion in the second paragraph that I will read out loud. It says -- and you knew Mr. Ramm, the president of CTR at that time, didn't you?
  - A. Yes.

Q. He writes: "As you recall, one of the principal reasons for the formation of The Institute," with a capital I and capital T, "was to remove the CTR from any activity relating to promotional or press activities on behalf of the

industry.

Since that time, the limited public relations activities of CTR have been concerned with trying to get better appreciation and understanding of the purposes and the activities of CTR by the press and the public.

In recent years, Leonard Zahn has been the consultant of CTR for this purpose."

Let me ask you whether your understanding of events -- first of all, whether you had an understanding of the events relating to the formation of The Institute, referring to the Tobacco Institute?

- A. Yes. That's my recollection as to the reason for the formation, or a major reason for the formation of TI.
- Q. And this is in 1974, when you were the public relations consultant for CTR, is Mr. Ramm accurate when he talks about the limited public relations activities of CTR being concerned with trying to get better appreciation and

understanding of the purposes and activities of CTR by the press and the media?

A. Yes.

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- Q. When was the Tobacco Institute founded, do you recall?
- A. If I am correct, it was formed, I think, in 1958.
- Q. And you talked before about the changes in the frequency and the subjects of the press releases by CTR.

Did that, did those changes relate in any way to that founding of the Tobacco Institute in about 1958?

MR. KRISTAL: Objection.

- A. Oh, I would say so.
- Q. Can you explain briefly what the connection is?

MR. KRISTAL: Objection, foundation.

A. Well, once the Tobacco Institute was organized, it began to make the public statements regarding smoking and health.

Now, whether this is overall, I don't know, there may still have been some from or in regard to TIRC or CTR, I don't remember, but I think generally that most of them began to come from The Institute and, after a while, virtually, excuse me, every one of them did.

MR. KLUGMAN: Let me ask you to take a look at a document that I will mark as Exhibit 31.

(Whereupon, Zahn Deposition Exhibit No. 31, minutes dated December 10, 1975, marked.)

Q. This is a documents headed "minutes of the special meeting of the board of directors" on CTR letterhead, December 10, 1975, starts with the Bates number DM140003 and goes through 0013.

Feel free to flip through there,

Mr. Zahn, but I want to ask you a question

specifically about a portion of the document that

is on the bottom of the page that's got a 140011

in the upper right-hand corner.

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A. 0011, that would be 11. Yes.

Q. Okay. This appears to be a talk given by Mr. Yeaman at that meeting on December 10,

Have you seen this document before?

- A. Oh, I must have, but I don't remember.
- Q. Let me ask you to focus on the portion of the last paragraph on the page with the 40011, we're on Exhibit 31, on Exhibit 31, where he says:

"It is my sober judgment that CTR, as it now operates, is the greatest public relations asset," underlined, "you have in the problem of tobacco an health, but the moment CTR becomes or the attempt is made to use it as an instrumentality, your asset will lose it value, because it will have lost its scientific integrity. End of ceremony."

Let me ask you whether that statement bears any relationship to your own view of CTR as a potential public relations asset?

MR. KRISTAL: Objection.

A. Oh, absolutely.

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- Q. How does this fit or not fit or relate to your views?
- A. Because it was and remained an honest organization in what it was doing. It sought to educate or inform the public about what it was doing, in terms of the smoking and health problem. And any attempt to do otherwise would have ruined the organization.

One thing I haven't heard mentioned at all in recent depositions, certainly in this one, is that while my effort, certainly, in 25 years, did not, I guess for the most part, succeed in informing a lot of people out there, CTR, by and large, from whatever I could learn, had a rather remarkable, wonderful reputation among scientists.

MR. KRISTAL: Objection.

THE WITNESS: Remember that a lot of scientists got a lot of money, never mind the

amount, they got a lot of money to do, some of them, some fairly important work.

Certainly everything that came out was a little bit of addition to the scientific literature, and it was done in a very outward manner, an honest manner. These men and women got the money to do the work. It was their responsibility to disclose their findings, and it was done in the normal scientific manner. That is what research is all about.

- Q. Did you agree with Mr. Yeaman that CTR, as a public relations value, would use -- the asset, excuse me, would lose its value if it lost its screntific integrity?
- A. Oh, yeah, it would have lost its reputation.
- Q. Talking about press releases a few minutes ago. And I believe you said you were involved in some of the press releases prepared by Hill & Knowlton for CTR, is that right?
  - A. Yes.

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- You prepared press releases after 1969? 1 Yes. Α.
  - Are you aware of any instance, as we sit here today, in which any press release that you were involved in or that Hill & Knowlton was involved in on behalf of CTR that was factually
    - A. No. I can't remember anything like that. I don't think CTR ever provided us with knowingly inaccurate or false information, or that Hill & Knowlton or I ever did a release on something we knew was false or inaccurate.
    - I'm not asking you to review for the accuracy. I'm just asking you if it has ever come to your attention that anything was inaccurate?
      - Α. No. Never.

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inaccurate?

You talked about CT after the formation of the Tobacco Institute and the limitations on its public relations.

Do you recall when the original Report

	on	Smoking	and	Health	of	the	U.S.	Surgeon	Genera:
	was	sissued	?						

- A. Yes. I think it was 1964.
- Q. That was a significant event?
- A. Oh, absolutely.

- Q. Landmark, milestone, blockbuster?
- A. Blockbuster, atom bomb.
- Q. Did CTR issue a comment? Did CTR issue or did Hill & Knowlton on its behalf issue a comment on the substance of that 1964 report, to the best of your recollection?
- A. I'm not sure whether it was CTR or The Institute. Frankly, I'm not sure either did, but I would, I think I almost remember that something was said publicly.
- Q. Well, do you recall whether CTR issued a press release on that?
  - A. No. I do not.
- Q. Okay. Let me ask you to take a look at what's been marked as Exhibit 32. It is a one-page document, and it's got a stamp in the

corner, CTR public statement 000961.

Do you remember seeing that?

- A. No. I don't recall. I'm sure I did
- Q. Can you recognize from its form what it
- 5 is, seen documents like this?

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- A. Yes. It is a press release.
- Q. And in this press release, do you recall whether you had any role in preparing prepare this?
  - A. No. I did not.
- Q. In this press release did CTR take issue with or comment on any of the scientific findings on the 1964 Surgeon General's Report?
  - A. No, not that I can see here.
- Q. This was at the time of issuance of that report, wasn't it?
- A. Yes. You asked a moment .go, did I have anything to do with, reading this text, I can say with almost 100 percent correctness, that Dr. Little wrote this himself.
  - Q. Well, it quotes a letter by Dr. Little?

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Yes. Α.

And in that letter, that is quoted in this press release, does he, did he say, according to the press release: "The Scientific Advisory Board to the Tobacco Research Committee would be happy to confer with you or anyone else you would designate with a view to cooperating as rapidly and effectively as possible on any needed research effort."

- A. Yes.
- Do you recall anything else that Dr. Little or CTR had to say on the subject of the 1964 Surgeon General's Report?
  - No. I do not. Α.
- When we have been talking about press releases you commented a couple of times, and Mr. Kristal may have asked you, I can't recall for sure, about a press release relating to the final report by Microbiological Associates?
  - Α. Yes.
  - And was that a press release on Q.

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A. I got it from the MAI report.

you used for this press release?

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Q. And that was written by whom?

A. Well, perhaps, the introduction, no, it was written by Dick Khouri, a scientist at MAI, and Carroll Henry, two scientists, that were the

lead scientists on the project. 1 2 And they had received funding from CTR? 3 And do you know Dr. Khouri or Dr. Q. Henry? Α. Yes. Since you issued this press release, have either of them said to you that there was 8 9 anything misleading or inaccurate about this press release? 10 11 MR. KRISTAL: Objection. Assumes facts 12 not in evidence. MR. KLUGMAN: I'm sorry, Mr. Kristal. 13 14 I would like to cure any defects in the question. What facts does it assume? 15 16 MR. KRISTAL: How would he know if they 17 read the press release? MR. KLUGMAN: He doesn't know whether 18 19 they read it. He spoke to them. I'm asking him whether in the course of speaking with them they 20

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made those comments.

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MR. KRISTAL: So the fact that they did or didn't make comments is what, meaningless, you, isn't it? If you can't established they read it, what's the difference?

MR. KLUGMAN: Go ahead, sir.

- A. I had seen Dick Khouri several times following the issuance of this release, between '84, or I would say '85 and '94, or '93 cr '92, not many times, but several times at meetings, and he never said, he was always pleasant, he was always a pleasant fellow. He said nothing about this, if, indeed, he had ever seen it.
- Q Did you issue this press release in an effort to interfere with the ability of the researchers, Dr. Khouri and Dr. Henry, to publicize their own views about their research?
- A. I didn't know they were going to do or had done anything in the area you have just stated.

No. It was to disclose what I thought were pretty major findings on a huge study.

1	Q. Did you ever see Dr. Khouri or
2	Dr. Henry at any scientific meetings?
3	A. Yes. As I have said, I have seen
4	Khouri, and I have also seen Carol Henry a few
5	times at meetings, but we never discussed this or
6	spoke about it in any way at all
7	Q. This being the press release?
8	A. Yes. And when I did see her, she had
9	left MAI.
. 0	MR. KLUGMAN: Let me ask you to take a
1	look at the document that's been marked as
2	Exhibit 34.
. 3	(Whereupon, Zahn Deposition
14	Exhibit No. 34, memorandum from Hilda and Leonard
15	Zahn to W. T. Hoyt, dated September 29, 1982,
16	marked.)
. 7	Q. And this is a memo to Mr. Hoyt. Was he
18	at CTR?
19	A. Yes
20	Q. From you and Hilda Zahn, subject
21	International Cancer Congress in Seattle?

A. Yes
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- Q. Is this a typical document in the sense of reports on meetings that you talked about earlier?
  - A. Yes.
- Q. One of the things you did as a public relations consultant to CTR was to attend scientific meetings and write a report; is that right?
  - A. . Yes.
- Q. Let me ask you to take a look at page seven. And, if you notice, item six, there is a reference to Carol Henry.

Do you see that?

- A. Yes. Yes.
- Q. Read as much of that as you like. What I would like to ask you about is the material that appears on the next page, the last item, under heading six, where it talks about what Henry told visitors.

A. Yes.

- Q. Do you recall that discussion, do you recall Henry or Carol saying those things?
  - A. Well, obviously I did, but I don't remember.
  - Q. Do you recall you had a discussion with her?
  - A. Probably. I mean we knew each other, and I always talked to the scientists at their post or exhibits, particularly those whom I knew
  - Q. And she told you that she was working on a paper, a submission for publication?
    - A. Apparently so.
    - Q. Do you --

- A. I don't know if she told me alone. We were talking and some other visitors to the poster sessions were there, whom she knew, and they asked her, well, what are you going to do now? And, you know, she mentioned these items.
- Q. Do you have any idea whether Dr. Khouri and Dr. Henry eventually did publish a scientific article on their experiments?

	<b>A</b> .	1	know	the	y pu	plispe	ed a	numb	er (	o f	
scie	ntific	: a	rtic	les	dur	ing the	e co	urse	of 1	the	
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- Q. Do you know whether they published an article on the same subject that was covered in the blue book, or in the final report that is the subject of your memorandum?
- A. I don't know for sure.

  (Whereupon, Zahn Deposition

  Exhibit No. 35, CTR's former Scientific
- Q. Let me ask you to take a look at a document that I'm marking as Exhibit 35. That's an exhibit that was prepared for purposes of trial in some cases involving CTR, and its got photographs of four gentlemen under the heading. CTR's Former Scientific Directors.

MR. KRISTAL: I object to this as leading. Do you know those scientific directors?

A. Yes.

Directors, marked.)

Q. Let me ask you a few questions first about Dr. Little

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MR. KRISTAL: Are you going to show him what some lawyer prepared and ask him questions or are you going to have him put it down and ask similar questions. You can lead him anywhere you want, without asking him about something a lawyer prepared.

MR. KLUGMAN: Are you finished?

MR. KRISTAL: Yes.

MR. KLUGMAN: Is that an objection?

MR. KRISTAL: Yes, that's an objection.

MR. KLUGMAN: I would ask you that you.

as you asked me, just to limit your objections just objections to form, and if we want to go on from there, I think that's my option. Thanks.

Q. Did you work with Mr. Little?

A. Dr. Little, yes.

O. Excuse me. Dr. Little?

A. Well, I saw him when he was in the office. There were occasions when I saw him out

of town. I had visited him at his request in Bar
Harbor where he lived, and, yes, I would say we
were good friends.

- Q. I don't want you to look at this exhibit, which as Mr. Kristal has pointed out tells us a little bit about these people, but were you familiar back in the 1950's, and 1960's, with Dr. Little's background?
  - A. Oh, yes.

- Q. Just tell us a little bit about that background and who he was before he came to CTR?
- A. He was really an amazing man, one of the greatest men, never mind scientists, whom I ever met, a man I admired and respected tremendously.

He had been president of the University of Michigan and Maine. I'm not sure about, I guess Michigan. He then, as I mentioned before, president or head of the organization that eventually became the American Cancer Society.

He had done some landmark research into

what is called the mouse Bittner virus,

B-1-t-t-n-e-r, and I had been told by some

prominent researchers, that he would have gotten

the Nobel prize in medicine, were it not for his

affiliation, for the Bittner virus research, were

it not for his affiliation with the tobacco

industry through TIRC.

MR. KRISTAL: Objection.

MR. KLUGMAN: Please, Mr. Kristal, don't interrupt the witness.

MR. KRISTAL: I have to make an objection, if there is something in the context of the answer is clearly hearsay.

MR. KLUGMAN: Your hearsay objection is preserved, you don't need to interrupt the witness. It is improper.

MR. KRISTAL: You don't need to yeal.

If my hearsay objections are all preserved, Then
I will not make any more hearsay objections.

MR. KLUGMAN: Did you have some doubt about that? Go ahead, Mr. Zahn. I'm sorry for

1 | the interruption.

- A. He was a most delightful man. He was a religion man. He was a lay preacher, and he could tell the most wonderful stories that had a lot of humor and a lot of philosophy to them, and he could tell a very funny somewhat dirty joke. He was a man for all seasons really, a remarkable personality.
- Q. You may have said this and, perhaps, I missed it, but do you know what he had been doing immediately ten years or so before he came to CTR?
- A. Yes. You call to mind, he was living in Bar Harbor, Maine, where he founded the Roscoe B. Jackson Memorial Laboratory or Roscoe B. Jackson Laboratory, named obviously for Mr. Jackson, a world famous institution for the genetically controlled mice they produced, used by researchers in cancer and other ailments, too, all over the world, to this day, as far as I know.

- Q. Did you ever hear Dr. Little discuss his views on smoking and health?
  - A. To a degree, yes.

- Q. Did you ever hear him discuss those views privately, that is not making talks to the outside world, but just sharing his views with the others in the office?
- A. Yes, I believe so. I can't recall specific things, but I have been alone with him, with a few other scientists.

On occasions at the CTR or the TIRC in some of the early days, he would sit and talk, and he was a great teacher for me in those days.

- Q. I think you mentioned this already, but did some of the press releases prepared by Hill & Knowlton in the early days quote or make statements about Dr. Little's views on smoking and health matters?
  - A. Yeah, they quoted him, if I recall.
- Q. Did you write some of those releases or see them at least as they were being prepared?

	<b>A</b> .	Oh,	Imá	ay hav	e, but	knowing	Dr.	Little,
it p	robab	ly wa	as a	quest	ion of	, Dr. Li	ttle,	you
know	about	t th	is th	ning,	so wha	t's your	view	on
it?	And	it w	ould	be mo	stly h	is. He	was a	
rema	rkabl	v ta	lente	ed lit	erarv	man.		

- Q. Did you ever know, during the time you met him, a difference between Dr. Little's privately expressed views on smoking and health and his public statements, that is, was he saying one thing publicly and having another view privately?
- A. Gee, not that I am aware of. It would be totally out of character for this man.
  - Q. Why do you say that?
- A. Well, he was a very honest man, intellectually and otherwise, I always thought.
- Q. Are you familiar with CTR's annual reports that have been prepared over the years?
  - A. Yes.

Q. And what's your role been in the preparation of the annual reports?

	<b>A</b> .	Well, I	had	a hand	in, until	the time I
	retired,	in every	CTR	annual	report.	
Ì		MR. KLU	GMAN	: Let me	show you	an early

annual report, which I will mark as Exhibit 36, and what I believe is the last or at least one of the last annual reports that you worked on, the report for '93. That's how I read your earlier testimony. Are you okay, Mr. Zahn? I know it's late and we'll try to get you out of here.

(Whereupon, Zahn Deposition Exhibit No. 36, 1959 Report of the Scientific Director, marked.)

(Whereupon, Zahn Exhibit No. 37, Report of the Council for Tobacco Research, 1993, was marked for identification.)

THE WITNESS: We'll take a break in a few minutes, maybe I can take a cold shower and it will revive me for the remainder of the or deal.

Q. What I wanted to ask you, and feel free to look at Exhibits 36 and 37, to the extent it

will be help, is to whether the format of the annual report changed at all over time.

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I have given you one with some handwriting on it, but I think that's okay.

- A. Yeah, I remember very well. Yeah, they are altogether different. The later years from the very early years.
- Q. Could you just very briefly describe the difference or differences in format?
- A. Yes. The earlier reports had extensive comment, either by Dr. Little or Hockett or a combination of both or whatever, about the overall smoking and health picture, pulling in some of the findings that might have been available from early, some of the first CTR grants and other research, as well, that had been published and then it went on to cover some of the CTR grantee reports, to a much greater extent.

The later reports became almost without any opinion whatsoever, any personal view or any

personal description of research findings, what they meant, what they did not mean and so forth.

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It was just consisted of a very brief introduction and then a list of abstract titles and authors, and then the abstracts that almost all of which, if not all of them, had been written by the scientist who got the grant.

- Exhibits 36 and 37, contain scientific abstracts?
  - A. I think the first one does, too. Yes.
- Q. And at least during most of the time -- where does that, on what page does that start?
  - A. 31 in the 1959 report.
- Q. And has that been a constant feature of the annual report, at least for many years?
- A. It has been, I would guess, if not this year, then the year before. I would guess that from the first year that published reports and abstracts were available, remember the first grants, I think, were given, I'm not sure, 1955

or '56 and giving, allowing for time to do the work and prepare a paper. This probably was one of the early ones, yes.

This was the only public record that CTR had available to inform the public about what the research dollars were doing.

- Q. Tell the jury, if you would, you have used the term abstracts. What is an abstract or scientific abstract?
- A. It is summary of the full report, giving the highlights.
  - Q. A summary of the full report by whom?
  - A. By the scientist himself or herself.
- Q. And that is a report that's made to whom? What's the full report, to CTR, to --
- A. No. The report is just made. It is to his colleagues, to his peers, and that's why he informs his peers or she informs her peers by publishing in a medical journal.
- Q. So it is an abstract of a published article or a summary of a published article?

rticle.

	A. Ye	es. It	almost	always,	in t	the
l	publication	proces	s, prec	edes the	ful	l a

- Q. And were you involved in the collection and preparation for publication of those abstracts?
- A. Well, not the collection. They always came into CTR, but I set up a procedure with the administrative head of the office and, you know, how these would be handled and collected and then given to me or first, I guess, to Dr. Hockett in his time or Dr. Gardner or some other scientist on staff to place them into categories.

And then I would handle all of the mechanics of getting it published.

- Q. To the best of your knowledge, during this period, in which up were involved in the preparation of the annual reports, did lawyers edit or have changes made in these abstracts of scientific articles?
  - A. Not that I knew of.
  - Q. To what kinds of people, what groups of

people, was the annual report of CTR sent or was it going out to?

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A. I would send perhaps, I think, the general figure is about 500 copies to the Tobacco Institute, which often had requests for information about smoking and health, and they would send a copy of the annual report.

I would distribute it to my media list of science writers, newspapers, magazines, radio TV outlets and also to newspapers published in tobacco growing or tobacco manufacturing areas.

And also using a specialized mailing house that maintained for the American Medical Association, lists of physicians and scientists in specialized areas, such as pulmonary physicians, public health physicians, copies were also sent to a number of those medical specialties.

Q. From your perspective as CTR's long time public relations consultant, what was the purpose of preparing and distributing the annual

report of CTR?

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- A. Well, you know, it was really the only way of there being a public record of what CTR was doing and accomplishing, in terms of all these data appearing each year or at least the data did appear, but in scores or perhaps hundreds of different publications. Here it is all in one place.
- Q. You testified, new subject here for a minute, you testified about attending scientific meetings as part of your providing services to CTR?
  - A. Yes.
- Q. Could you give some rough estimate of how many meetings you attended over the years or how much each year? Just kind of give the jury an idea about that.
  - A. Hundreds, literally.
- Q. Were these meetings that were open to the public, closed meetings?
  - A. Well, I was invited to some that were

so small, and they were the kind of meetings that no publications came from, or, I guess some did, but it was not expected.

There were a few of these that I went to. But generally, they were not publicly available meetings, but they were meetings that occurred on a regular basis for the most part, and physicians specializing in or interested in the topic at hand would go.

- Q. And did you go there to speak at these meetings or present a position or just --
- A. No. I went there to listen, learn and look to make some extra money from freelance material.
- Q. What do you mean look to make some extra money?
- A. Well, I would always, almost always, be able to find some very interesting stories for the medical publications for which I wrote. I did not freelance for lay publications. I wrote for medical publications and for quasi medical

1 | publications.

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- Q. You were doing this science writing not as a part of your job for CTR?
  - A. No, no, as a freelance writer.
  - Q. And when you attended these meetings, did you write reports on them?
    - A. Yes.
  - Q. Did you, in writing those reports, use your background as a science writer?
    - A. Obviously, yes.
  - Q. Can you tell us a little bit about what a science writer is and what your credentials were in that field?
  - A. Well, my credentials improved, the longer I stayed in it, because I learned more. I was a good reporter when I was with United Press.

I had good training, and I took to it well. I became a very competent writer, no matter what my subject was. If I didn't know the subject, I researched it, until I did, or I asked

enough people to inform me, and I think I can still do the same thing. So that's my literary background.

Is there anything further you want to know in that regard?

- Q. Well, I just, this is something that you did, I think you said, over the course of 25 years?
- A. Oh, I did it for more than 25 years, I mean freelance writing, I did approximately, even longer than that a little bit.
  - Q. And you have had articles published?
- A. Oh, yes, I have been published in the Journal of the American Medical Association, Geriatrics, Medical Post in Canada, Medical Tribune, there was a Medical News in England. I have many, many articles published in the German equivalent, medical equivalent of Time Magazine, the same kind of format, and the publisher also had, I think, a biweekly, I should say, a biweekly, that is every two weeks, semi-weekly is

every week, a biweekly newspaper called Proxis
Curiae, I would write in English and they would
translate into German.

- Q. Were these articles about smoking and health in some instances?
- A. No. I never wrote about any client good or bad. It was all unrelated to any client business that I had.
- Q. Mr. Kristal asked you some questions about a meeting in Stockholm Sweden that you attended back in 1979. And you remember, I think you said, you had some memory of attending that meeting?
  - A. Yes, sir, I do.

- Q. And you attended that meeting on behalf of other client, not CTR, correct?
- A. No. I don't think. No, I did not go for CTR, I guess I either went for Philip Morris Europe or ICOSI. I'm not sure how it is pronounced.
  - Q. Take a look at Exhibit 21, which is the

action plan that Mr. Kristal showed you.

Let me ask you first: To the best of your recollection, while you were at that meeting, did you attack or undermine any presentation, any scientific presentation that was made at the Fourth World Conference on Smoking and Health in 1979?

- A. Oh, no. I said nothing publicly to anybody.
- Q. Did in this action plan as far as you can see, leafing through it quickly, assign you or anyone else the function of attacking or undermining any activities or presentations at the Fourth World Conference on Smoking and Health?
- A. I don't see anything in it, in a very quick scan. Certainly, I can speak most certainly, more surely about myself. No. I had no such direction, no such assignment.
- Q. There is a, on the third page, there is a section that says "action during conference." I

wanted to know if you understood that anything in there was to suggest that you were trying to undermine or attack or diffuse anything that was happening at these presentations at the Fourth World Congress on Smoking and Health?

- A. No. It was all, as far as I can recollect, very much a straight reporting job.
- Q. Maybe you just answered my first question, but what do you recall doing there?
  - A. Just reporting on what I heard.
- Q. Do you remember whether anyone that you were working with there issued any public statements or press releases or made any public comments during the course of the meeting?
- A. I don't recall any such thing.

  THE WITNESS: Are you through with this?

MR. KLUGMAN: Yes.

(Whereupon, Zahn Deposition

Exhibit No. 38, SAB members 1954-1997, marked.)

MR. KLUGMAN: Let me mark as Exhibit 36

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l	
1	A. Oh, yes.
2	Q. Who were they collectively? I don't
3	need he each one. What do they have in common?
4	MR. KRISTAL: Objection, leading.
5	MR. KLUGMAN: Do they have anything in
6	common, sir?
7	MR. KRISTAL: It is not a function of
8	your question. It is a function of handing this
9	witness a lawyer-generate document which says SAB
. 0	members 1954 to 1967, which has the name, which
. 1	apparently has the years they were on the SAB,
. 2	which has what institution they were, and asking
. 3	him if they did anything in common.
. 4	Q. Did they have anything in common, sir?
. <b>E</b>	A. No.
. 6	MR. KRISTAL: Objection.
. 7	Q. How did you come to know some these
. 8	people?
9	MR. KRISTAL: Same objection.
2 0	A. By attending SAB meetings, although
? 1	some I had met before they were members of SAB,
	11

and I had no idea they would be approached to become members.

- Q. As a general matter, were you familiar with the scientific qualifications of people who became members of the Scientific Advisory Board?
  - A. Yes.

- Q. Can you describe generally what kind of scientific qualifications they had?
- A. By and large, not all of them, but the great preponderance of them, were men of great stature in their respective medical and scientific areas. They were remarkable in what they had done and what they, some of them were going to continue to do.
- Q. Did you attend meetings of the Scientific Advisory Board?
  - A. Yes.
- Q. Approximately how many meetings of the Scientific Advisory Board did you attend over the years, or how often did you attend over what period?

<b>A</b> .	Well,	there were	three meetings a year
I mean nor	rmal me	eetings, two	o to discuss grants and
one think	tank.	I did not	attend every one
through th	he year	rs, because	I was away, perhaps.
at other t	meeting	gs, or was g	gone for some reason.
It had to	be se	veral score.	

Q. That means --

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- A. 40 or more at least. You know what a score is?
- Q. . I know what a score is. It is the several score. I don't know whether to multiply three by 20 or what.
  - A. Four score and --
  - Q. So in the neighborhood of 50?
- A. You young people have no literary sense. I'm sorry.
  - Q. I don't mind being told I don't have any sense, but --
    - A. Literary.
    - Q. All right.
    - A. I seem to have gone through a goodly

number of them.

VIDEO OPERATOR: Excuse me. I need to change the tape in two minutes.

(Discussion off the record.)

 $\label{eq:VIDEO OPERATOR: Back on the record.}$  The time is  $5{:}12{:}$  This is the beginning of the fourth videotape.

- Q. Other than the members of the Scientific Advisory Board, Mr. Zahn, who was in attendance at the meetings of the Scientific Advisory Board that you attended over the years?
- A. There always was scientific staff.

  There often was a member of the Industry

  Technical Committee. And there occasionally was a guest speaker or two, not always, but occasionally, there was at least one guest speaker, sometimes two, who had an interesting topic the scientific staff thought might be of interest to the board and also who might be considered as a candidate for future membership on the board and myself, of course.

	Q.	You	say	"scientific	staff"	are	those
CTR	employees?						

- A. Yes. The Scientific Director, the Research Director, the Associate Scientific Directors, not all of them were there at every meeting, you know, sometimes someone was somewhere else or whatever.
- Q. You talked a little bit about this before, but very briefly, what did the members of the Scientific Advisory Board do at those meetings? What was the business at hand?
- A. They discussed the applications that had come in in the preceding months.
- Q. What happened after they discussed them?
- A. They voted on them for merit and relevance. Was this stuf' that we should be putting money into? Will it help? Will it provide information?
  - Q. What do you mean by relevance?
  - A. Was it relevant to the overall general

purpose of smoking and health, even though it was in a noncancer, noncoronary, nonpulmonary area, would it provide basic information? Is there a lead here? Or is there a possibility? Things of that sort.

- Q. Who voted on the research proposals?
- A. The SAB.

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- Q. Did you vote? Did you have a vote?
- A. Oh, no. No.
- Q. Did members of the scientific staff of CTR, other than the Scientific Director, have a note?
- A. No. No. I should add there were usually two other people. Tom Hoyt, as far as I know, attended every meeting, and whoever was chairman or president of the Council, you know, Henry Ramm or a B:11 Hobbs.
  - Q. Administrators?
  - A. Yes.
- Q. Did the member, you said something about the Industry Technical Committee, and you

testified about it before, what was that, and what was the function of the representative of that group at those meetings, as you observed it?

A. My understanding was that it was composed of Technical Directors, of Research Directors of the various member companies, and either the chairman, I guess, most often the chairman, or some other scientist on that board would attend CTR, SAB meetings, in case there was a question, a technical aspect had some up, that had to be answered and here was the person who could do that.

But there were a number of meetings, as I recall now, where there was meeting from ITC there.

- Q. Did that representative of the Industry Technical Committee have a vote on the proposal?
- A. No. The only people who voted on the applications were members of the Advisory Board.
  - Q. In their discussions that you can

remember having attended these meetings over the years, did the members of the Scientific Advisory Board who voted on these proposals talk about whether a particular research proposal would be likely to be helpful or harmful to the interests that the tobacco company sponsors at CTR?

MR. KRISTAL: Objection.

- A. I can't ever recall anybody ever returning a response the that would include that. No. They were just like Advisory Board members to any scientific grant, any granting institution, they were looking to find somebody who could do work or looking for work that would provide some information.
- Q. During your attendance at these meetings, did you observe any discussions about the selection of new Scientific Advisory Board members?
- A. Yeah. I can recall. I can't be specific, but I can recall some general comments, perhaps, even discussions.

Q. Did you observe how new members of the Scientific Advisory Board were selected?

A. Oh, from a number of ways, being a guest speaker on a certain subject, somebody known by a member of the Advisory Board or the staff who knew what this particular person might be working on, that might be of value to the research program, in terms of, you know, an interesting project.

They would come almost from a number of areas, knowing that a scientific member had told them, well, I'm going to retire in six months, and I think I will leave this board or knowing I'm going to retire in a year and I'm going to leave the board, or I would like to leave the board. A lot of them never wanted to leave.

- Q. Based on what you observed, as far as you could tell, did the tobacco companies have any input on the selection of new members of the Scientific Advisory Board?
  - A. I was not aware of any.

Q. Based on what you observed, and to the extent that you could tell, did lawyers have any role in the selection of new members?

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- A. I never saw anything to indicate that.
- Q. We talked about the Industry Technical Committee. Do you remember the names of any of the individuals who were members of the Industry Technical Committee, that came to some of the SAB meetings?
- A. Preston Leake, because we became fairly friendly, William Bates, I believe, I can't recall anyone else, but I know there were. I just can't remember.
- Q. You have been asked this question before, but let me come back to it for a second, so I can ask you a few additional ones. So far as you can recall, did lawyers attend any of the SAB meetings that you have attended?
- A. Well, as I have said a number of times, the only lawyer I ever recall being at a meeting, and it was only at one meeting, that he was

1	there, was Ed Jacob.
2	Q. Was he the lawyer for CTR at that
3	time?
4	A. I believe so.
5	Q Based on what you observed at the
6	meetings that you attended, meetings of the
7	Scientific Advisory Board and any other knowledge
8	you had about CTR, did lawyers have a role in
9	selecting the research to be funded from CTR's
10	grant in aid program?
11	A. I'm not aware of anything in that area,
12	at all.
13	(Whereupon, Zahn Exhibit No. 39,
14	confidential report dated April 26-27-28, 1978,
15	was marked for identification.)
16	Q. Let me show you what's been marked,
17	what I will mark as Exhibit 39. Do you recognize
18	the sort of general format of that document?
19	A. Yes.
2 0	Q. And what does it look like it is, based
21	upon its format?

Α.	It is a report of a SAB meeting of	
April 26	through 28, 1978, a fairly standard f	orm
used for	every SAB meeting.	

- Q. Down at the bottom of attendance, its got Mr. Jacob's name and your name?
  - A. Yes.

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- Q. Do you believe one way or the other whether that is or isn't the meeting that Mr. Jacob attended?
  - A. Well, I have to see -
    MR. KRISTAL: Objection.
- A -- because I don't recall his being at any, other than the one meeting at which I was also present, and it would have to be this one
- Q. Now, you have testified a couple of times in this deposition about what you recall Mr. Jacob saying at that meeting that he attended.

I'm not going to ask you to repeat that, but can you just, in a couple of words, tell me what the general subject matter of his

comments was?

MR. KRISTAL: Objection.

Α.

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Q. And other than those comments made by Mr. Jacob, do you recall hearing at any time about any scientific areas, any areas of scientific research that CTR was not supposed to fund research in?

A. No. There were some comments at some point through the years, about CTR not supporting a certain somebody, perhaps not so much because of what he or she proposed doing, but because they thought that person would be better off going to, say, NCI, National Cancer Institute, or the Heart Association, because of the nature of the project and these guys on the Advisory Board knew very well the mechanism of how that sort of thing would work out better for the scientists actually.

- Q. Okay. I am talking about areas of research.
  - A. No. I never.

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- Q. Did you ever hear, let's put aside what you already talked about with Mr. Jacob, did you ever hear CTR is not supposed to fund research into some particular area, something like that?
- A. No. I can never recall hearing anybody say anything about that.
- Q Did CTR have a written policy as to whether its recipients of CTR grant in aids were free to publish their research findings in scientific literature?
- A. Yeah, I think there was a form or something that each applicant got with the application. There was something. I'm not quite sure what it was.

(Whereupon, Zahn Deposition Exhibit No. 40, policy statement, marked.)

Q. Let me mark as Exhibit 40 a document headed statement of policy stating conditions and

terms under which project grants are to be made.

We've got a few here, and I don't want to be handing out inconsistent copies.

Do you recognize that document,

Mr. Zahn?

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- A. Yes. I do.
- Q. Is that one iteration, at least, one version of the statement of policy that TIRC and CTR have?
  - A. Yes. Yes it is.
- Q. What, did you have an understanding during the time that you provided services to CTR, as to whether recipients of CTR grants were free to publish their findings in the scientific literature?

MR. KRISTAL: Objection.

- A. Not only were they free, they were urged to publish. It was almost a requirement of getting the money.
- Q. What's your basis for saying they were not only free, but urged to publish?

- A. Well, just the fact that almost everyone of them did, as far as I can recall.
  - Q. Did you ever hear that said, while you were around CTR, that the grantees were free to publish their research findings?
  - A. It was a given. I mean these were all scientists who were working on the applications, members of the Advisory Board, that's how they lived their whole scientific lives.
  - Q. And to the best of your knowledge, during the decades, while you were providing services to CTR, did any recipient of a CTR grant complain that he or she was not given freedom to publish in the scientific literature?
  - A. I can recall only one instance, one scientist.
    - Q. Are you talking about Dr. Homburger?
    - A. Yes.

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Q. Did that, and you testified about this before, did that involve research done under CTR grant?

- A. I believe it was a contract.
  - Q. Any grantees you heard, came the your attention, complained about not being free to publish their findings in the scientific literature?
    - A. No. I'm not aware of any.
  - Q. Let me ask you a few questions about Dr. Homburger and the scientific meeting that you and he both attended in Atlantic City in April, 1974.

You recall giving some testimony about that earlier?

A. Yes.

- Q. Why did you attend that scientific meeting in the first place?
- A. Well, it was probably a meeting that I had attended before, on the basis of the subject matter that I knew would come up, I may have seen the actual program of this meeting. From my earlier testimony I am now aware that I knew weeks before this meeting was coming up, that

Homburger had made some comments to CTR about which had, as I also learned, had decided not to continue his supporting his study.

And his comments were, as I subsequently learned, words to the effect that CTR was cutting him off, because he had produced larynx cancer in his animals, and CTR wanted to censor his report that he was going to give at the meeting, and then I learned that he was going to have a press conference at the meeting, and Dr. Hockett then gave me some material -- the time element, I'm not sure about, but it preceded the actual opening of the meeting, which would have been on a Monday, usually it is.

Bob Hockett had given me copies of some correspondence between CTR and Dr. Homburger, and so I went to Atlantic City and learned from the public information person for the organization, ASEP, I think, American Society for Experimental Pathologists or for Experimental Pathology, I'm not sure, told me, and I'm not sure exactly how I

learned, but I have to assume that she told me that he had requested, that Dr. Homburger had requested that they, ASEP, hold a press conference for him, at which he was going to say these things in public to the press.

- Q. And it -- I'm sorry. Go ahead.
- A. And I so informed Tom Hoyt by telephone from Atlantic City. I either prepared or had prepared before then a press release. I drafted something. I told Mr. Hoyt that if Homburger did this thing, he was going to get a tremendous amount of media attention.

CTR's reputation, and that, if he did go ahead with it, then we ought to issue a very strong, or a strong statement.

And I told Mrs. Graves, who was the public information person for the organization, that I was going to do this thing. I gave her some of the background I had and told her I thought that she ought to talk to some members of

the organization of the board, who probably knew Homburger and about him.

And she called me back later that day or I called her, whatever, I think she called me back at the hotel and told me that, yes, she had talked with her board and that they generally corroborated the fact that Homburger seemed to be an operator who obviously needed money to keep his research institute alive and that he was, well, as I say, an operator. I think she is the one who used that word.

Anyway, she told me that -- whether I suggested or she said they were going to cancel the press conference, and that's what did happen. She did cancel the press conference.

To carry it a bit further,
Or. Homburger presented his paper the next
morning before his peers, at which he had every
opportunity to say what he had threatened to say,
that CTR was cutting off his funds because it had
found these very bad effects of smoking, CTR had

tried to censor his paper, his report, what he was going to publish, but he presented not a word of that.

2.1

He just presented a fairly straight away report, with no such claims whatsoever about censorship or anything of that kind.

And later that morning, I guess, about noon, he did come into the press room. I was there, I remember, I had known him anyway, or cf him, and seen and heard him before.

And it was interesting to me that he is from Cambridge, was familiar with and well known to the science writers from Boston newspapers, there were at least two of them, I think, in the press room at the time, and he just walked around, nodded to some, he was not unfamiliar to a number of press people.

And he just walked out. He did not say what he had threatened to. He had every opportunity to go to them and say, gee, I would like to talk to you for a few minutes, a not

unusual occurrence between scientists and people in press rooms. And that was that.

- Q. Mr. Zahn, when you did what you did in Atlantic City in April, 1974, were you trying in any way to prevent Dr. Homburger from reporting on the results of his scientific research?
- A. Well, perhaps I was. I was trying, and I made sure to Mrs. Graves, was that Homburger was not going to get away with what he said he was going to do, because he would not be telling the truth, he would be lying.
  - Q. About what, sir?

A. About what he had found in his research, and what he claimed the Council was doing to him.

And I said that would be harmful to my client. He would be maligning the Council, and I would do all I could to make sure that he would not get away with it.

 $\label{eq:mr.klugman:} \textbf{We're going to take a}$  break.

VIDEO OPERATOR: Off the record, the time is 5:35.

(Break.)

MR. KLUGMAN: We've had a discussion off the record. It is now six o'clock, and based on the estimates of how much examination time would be needed to conclude the deposition, it appears to me that we've got somewhere between two and four hours to go, and I don't think it is fair or productive to put Mr. Zahn through that.

I say that somewhat reluctantly, or very he reluctantly, because it had been Mr. Zahn's strong desire to conclude his deposition, and I just don't see how doing that is feasible, under the circumstances.

So we'll have to talk about when we can finish that up.

MR. KRISTAL: While we're on the record, there is no question that we will be completing this deposition. Mr. Zahn, will you agree to appear to complete this deposition? The only

reason I'm asking is I've had an experience where with another gentleman in this case, we broke with an understanding that we would reconvene to finish and now the witness is saying he is not going to come back.

THE WITNESS: Well, I'm not --

MR. KLUGMAN: Don't answer that

question.

MR. KRISTAL: I don't want to break today, unless on the record we have an agreement that the deposition will, in fact, be finished.

MR. KLUGMAN: I'm not going to make that agreement.

MR. KRISTAL: You're not going to agree that we will finish him?

MR. KLUGMAN: I'm not going to make that agreement, unless you give Mr. Zahn and me a chance to discuss it and see if he wants to.

He's got rights. He can make a motion for whatever relief he might seek. It is not something I have discussed with him, it just

isn't, as I say, fair to him or productive to continue and say that once you got him in the room, he can't leave. Nobody he could seek that relief at six o'clock. If he wants to seek it, he will.

MR. KRISTAL: That's what I want to make sure, we're not leaving here with one side thinking they are going to go make a motion to do something about this deposition.

MR. KLUGMAN: I have no expectation, and so far as I know, Mr. Zahn has no expectation of doing that, but I don't think it is fair to exact that from him without our having had a chance to discuss it.

MR. KRISTAL: All right. Why don't you discuss it with him?

(Discussion off the record.)

THE WITNESS: Mr. Kristal, I'm supposed to leave in two weeks for Nepal. I'm closing a contract on a house there, but I have decided to cancel that, I will stay here and we'll finish

the deposition, when we can, whenever it is mutually agreeable.

MR. KRISTAL: Just so you know, I'm happy to do this well before two weeks, if it fits with your schedule.

 $\label{eq:mr.KLUGMAN: We're going to have to talk.} \\$ 

THE WITNESS: It depends on these people.

. We're moving to Nepal, as you know. We are going back to nature. I'm kidding.

MR. KLUGMAN: Mr. Zahn will come back. We need to have a discussion about the length of any future deposition, so that we avoid a repetition of today. We've got to figure out where we are and where we are going, but subject to that he's coming back. He is not going to make any application to avoid further testimony, but we have to discuss, and you may have to get some court intervention to figure this out if we can't agree on it.

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1	MR. KRISTAL: What are you suggesting?
2	I'll be happy to agree to half a day.
3	MR. KLUGMAN: That's fine. That's a
4	good place to start.
5	MR. KRISTAL: Nine to twelve,
6	twelve-thirty whenever lunch is.
7	MR. BOAS: Let me state for the record
8	that I would be able to do it within two weeks,
9	so that you are not interrupting your trip.
10	MR. KLUGMAN: I've got some problems.
11	And we need one of you guys here. Can you guys
12	give us an idea now when you are available?
13	MR. KLUGMAN: We're off the record.
14	(Examination suspended)
15	
16	

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I, E. D. SMITH, RPR-CRR, a Notary Public of the State of Maryland, do hereby certify that the within named, personally appeared before me at the time and place herein set out, and after having been duly sworn by me, was interrogated by counsel. '

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that the stipulations contained herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 22nd day of December, 1998.

20 My commission expires

November 1, 2000

Notary Public

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## CERTIFICATE OF DEPONENT

1 2

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions of corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

LEONARD ZAHN

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518:12 520:19 521:5				



	CONFIDENTIAL UNDER SEAL 692
1	Mildred C. Richardson )
2	et al., ) In the
3	Plaintiff ) Circuit Court
4	) For
5	vs. ) Baltimore City
6	) .
7	Philip Morris, Incorporated, ) Case No.:
8	et al., ) 96145050/CE212596
9	Defendant ) VOLUME III
10	
11	Deposition of LEONARD ZAHN taken on
12	Wednesday, January 13, 1999 at 9:41 a.m., at the
13	Inn at Great Neck, 30 Cutter Mill Road, Great
14	Neck, NY before E. Duane Smith, RPR-CRR, Notary
15	Public.
16	
17	•
18	
19	
20	Reported by:
21	E. Duane Smith, RPR-CRR
	COURT REPORTING CONCEPTS, INC. Baltimore, Maryland
	Phone (410) 821-4888 Fax (410) 821-4889

## CONFIDENTIAL -- UNDER SEAL 692 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA 1 Samuel Albert Reed, 2 3 Plaintiff 5 Philip Morris, Incorporated, ) Civil Action No.: et al., ) 96-050750 Defendant ) VOLUME III 8 Deposition of LEONARD ZAHN taken on 9 Wednesday, January 13, 1999 at 9:41 a.m., at the 10 Inn at Great Neck, 30 Cutter Mill Road, Great 11 Neck, NY before E. Duane Smith, RPR-CRR, Notary 12 13 Public. 14 15 16 17 18 19 Reported by: 20 E. Duane Smith, RPR-CRR 21 COURT REPORTING CONCEPTS, INC. Baltimore, Maryland Phone (410) 821-4888 Fax (410) 821-4889

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PROCEEDINGS

2 Whereupon, --

VIDEO OPERATOR: Today's date is

January 13, 1999. The time is 9:41 a.m. This is
the continuing deposition of Leonard Zahn.

May I ask now that the attorneys introduce themselves and for the court reporter to reswear the witness.

MR. BOAS: Craig Boas from the Law Offices of Peter Angelos on behalf of plaintiffs in Richardson and Reed.

MR. KRISTAL: Jerry Kristal, Weitz & Luxenburg on behalf of the plaintiffs.

MR. KLUGMAN: Steve Klugman, Debevoise & Plimpton, for the Council for Tobacco Research in the Richardson and Reed cases and for the witness.

MR. SCHEINER: Alan Scheiner from

Debevoise & Plimpton, also for Council for

Tobacco Research in Richardson and Reed and for

Leonard Zahn, the witness.

MS. WOODWARD: Sky Woodward, from Miles & Stockbridge in Baltimore, in the Richardson and Reed actions, for the Council of Tobacco
Research.

MR. BELLACOSA: Peter Bellacosa, from Kirkland & Ellis, on behalf of Brown & Williamson Tobacco Corporation; and for purposes of this deposition, on behalf of Philip Morris; R.J. Reynolds; and Lorillard Tobacco Company.

## LEONARD ZAHN,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

## EXAMINATION BY MR. KLUGMAN:

Q. Mr. Zahn, it is a new year. Happy new year. We're in the same place. I hope it doesn't imply that we haven't made some progress.

We've concluded one session of the deposition, and now we're back again. I want to pick up where we were on the discussion of a

scientific meeting in Atlantic City back in April, 1974.

You remember that we were talking about that?

- A. Yes. I do.
- Q. And, specifically, we were talking a little bit about Dr. Homburger in connection with that meeting?
  - A. Yes.

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- Q. You recall, Mr. Zahn, who sponsored that meeting?
- A. It was a scientific pathology group.

  The acronym, if I remember correctly, ASEP,

  American Society for Experimental Pathology or of

  Experimental Pathologists. I would guess it is

  the former. But I'm not quite sure.
- Q. Okay. You have told us earlier in the deposition, that one of the things that you did was to attend, over the years, was to attend scientific meetings and write reports on them?
  - A. Yes.

Į		Q.	Did you	write	a	report	on	this	meeting
١	in	Q. April,	1974?						

A. I don't remember having -- I don't have a specific recollection of that, but I know I did, because I did for every meeting that I went to.

MR. KLUGMAN: Let me ask the court reporter to mark as the next exhibit, Exhibit 41, a four-page document and first page bears a Bates stamp number ZN 6241 and a computer generated No. 10226106.

(Whereupon, Zahn Deposition Exhibit No. 41, memo dated April 22, 1974, from Zahn to Hoyt, marked.)

- Q. Let me have you look at the one the court reporter has marked, Mr. Zahn, and ask you to take a look at it and ask you whether you can tell us what Zahn Exhibit 41 is.
- A. It is a memorandum I addressed to

  Mr. Hoyt on the subject being the meeting of the

  Federation of American Society for Experimental

Biology in Atlantic City, New Jersey, April 7 to 12, 1974.

The ASEP I mentioned a moment ago is a constituent society of the Federation.

- Q. Is this the meeting we have been talking about?
  - A. Yes.

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- Q. This is your memorandum of that meeting to CTR?
  - A. Yes.
  - Q. Can we call it the FASEB meeting?
- A. Yes. That's the common name for the Federation.
- Q. Was this FASEB meeting in April of 1974 a scientific meeting of the general kind that you have testified you attended often and reported on during your career?
- A. Yes. This particular one happens to be one of the biggest, I think to this day, one of the biggest scientific meetings each year.
  - Q. Very generally, Mr. Zahn, can you tell

us what happens at a scientific meeting like this, what are the events, kinds of events that go on?

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MR. KRISTAL: Objection, vague.

A. Well, there are a number of presentations. In this case, there could well be thousands, including poster presentations, in which scientists present the findings of their research to their peers.

They do these, do this in meeting rooms where they speak, and they also do it at what they call poster sessions, in which they have a presentation on a board that deals with their studies, and they discuss them with people who visit them at the posters.

So this, in the last 15 to 20 years, has become a very prominent method of presenting findings at scientific meetings, as and a very good one, too.

Q. And did scientists make presentations of that sort at the April, 1974 FASEB meeting in

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- A. Yes.
- Q. About how long did that FASEB meeting last?
- A. Well, this one lists six days. It started on the seventh, and there probably were some major, perhaps one plenary session that day, and then for the next five days or four and a half days, there were literally thousands of presentations.
  - Q. What is a plenary session?
- A. A full session, just one full session, with no concurrent sessions.
- Q. But scientists made presentations then at the FASEB meeting then over the course of days?
  - A. Yes.
- Q. Did you attend and listen to any of the scientific presentations at the April 1974 FASEB meeting --
  - A. Yes --

1	Q. Let me finish, please at the FASEB
2	meeting in Atlantic City?
3	A. Yes. I did.
4	Q. Did Dr. Homburger make any
5	presentations at that meeting?
6	A. Yes. He did.
7	Q. And is that presentation, did you
8	attend that presentation, that Dr. Homburger
9	made?
10	A. Yes, I did.
11	Q. And is this presentation that you
12	referred to by Dr. Homburger at the April, 1974
13	FASEB meeting in Atlantic City something
14	different and apart from the scheduled press

A. A press conference is a press conference. It is not part of the scientific sessions, so, in that sense, it was separate.

conference that we have been talking about?

- Q. We have been talking about a press conference that didn't happen.
  - A. That's right.

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Q. I just want to make sure we're clear,
did the scientific presentation by Dr. Homburger
in fact, happen at the 1974, April, 1974, FASEB
meeting in Atlantic City?
A. Yes. He got up at the podium in the
meeting room at the time he was supposed to and

gave his paper.

MR. KLUGMAN: Let me ask the reporter to mark as Exhibit 42 some handwritten notes which take up four pages and the first page has a Bates number ZN 19617, and a computer No. 10239061.

(Whereupon, Zahn Deposition Exhibit No. 42, handwritten notes, marked.)

- Q. Do you recognize the handwriting there, Mr. Zahn, in Zahn Exhibit 42?
- A. I believe it is mine. It is a little different than the way I write now, I think, but, yes, I believe it's mine.
- Q. Assuming you can read some of it, can you tell us what the handwriting refers to? If you can't read your own handwriting, I guess you

will have to tell us that.

A. Well, I have my old reportorial abbreviations in here. General, I can't make the next word out, it is kind of blurred. Research Director of CTR, and asked me to withdraw the paper published in abstract form. And since I wanted to give data, I put together something they have approved. Then he showed some slides.

Okay. I'm sorry, the first two words of the paragraph I just read should be, and I'm -- while I have it abbreviated here, it was my good friend, the Research Director of CTR, has asked me to withdraw, et cetera. Then he showed some slides.

- Q. I don't want you to read the whole document. Read as much as you like. Can you tell us what this is?
- A. These are my notes on Homburger's presentation.
- Q. That's Zahn Exhibit 42, the handwritten notes?

A. Yes.

Q. Did you then use those handwritten notes to prepare Zahn Exhibit 41 as your report to CTR or at least a portion of Exhibit 41, which is your memo to CTR?

And I would direct your attention to the material that appears at the bottom of page one and the top of page two under paragraph number one, Exhibit No. 41.

- A. I would assume so. I also would have used the tape recording that I made, you know, from a small hand-held cassette recorder.
- Q. Mr. Zahn, at the PASEB meeting in Atlantic City in April, 1974, did you do anything to try to prevent Dr. Homburger from making this scientific presentation?
  - A. Oh, no, not at all.
- Q. Do you -- did Dr. Homburger, in this scientific presentation, present the results of research that was funded, had been funded by the Council for Tobacco Research?

- A. So he reported.
- Q. And did that research that he was reporting on involve the exposure of hamsters to cigarette smoke?
  - A. Yes.

Q. Let me ask you, maybe an efficient way to use our time, Mr. Zahn, I'm going to ask the reporter to mark another document.

While he does that, I wonder if you could read the portion, to yourself, read the portion of Zahn Exhibit 41 that pertains to Dr. Homburger.

MR. KLUGMAN: This should be Zahn Exhibit 43. I would like to have marked a two-page document.

The first page, there are copies of printed material, the first page says Federation Proceedings, Abstracts, 58th Annual Meeting, Atlantic City, New Jersey, April 7-12, 1974.

And the second page is a group of, again, a copy of the printed page, six paragraphs

on the page. One of them is marked off in the original document, but a copy of the document, that comes from CTR's files.

Exhibit No. 43, Federation Proceedings, marked.)

MR. KLUGMAN: I would like to have

marked as Exhibit 44 a four-page document. The

first page has a Bates number CTR contracts

005463, and it runs through 66. And that first

page has a computer generated No. 11225204, and

it runs through 207.

(Whereupon, Zahn Deposition

(Whereupon, Zahn Deposition Exhibit No. 44, press release, marked.)

Q. Okay, Mr. Zahn, let me ask you to take a look at what we have had marked as Zahn Exhibits 43 and 44.

I would ask you first if you can tell us what Exhibit 43 is.

A. It appears to be a copy of a page from the abstract book that dealt with the April meeting of the Federation, FASEB.

Q. How about the second page of it? I want to ask you particularly about the portion that's been marked, which is the --

- A. The page copied includes an abstract submitted by F. Homburger, and obviously it's an abstract of a paper he was going to present at the meeting.
- Q. And that's the paper he did present at the FASEB meeting in April of 1974 at Atlantic City?
- A. Yes. According to the title, it seems to be that paper.
- Q. How about Exhibit 44? Do you recognize that?
- A. I'm sure I have seen this before. I don't recall it. But this probably is the, undoubtedly is the paper that Dr. Homburger had available in the press room at the meeting.
- Q. Did you prevent Dr. Homburger, or anyone else, from distributing to anyone the material in Exhibit 43, Zahn Exhibit 43, or Zahn

Bxhibit	44,	at	the	FASEB	meeting	in	Atlantic	City
in April	1, 1	974	?					

- A. No. I did not.
- Q. Let me ask you to go back and take a look at Zahn Exhibit 41, where there is, on the third paragraph, on page one, in the first paragraph under number one, you see the paragraph that has Dr. Homburger's name underlined?
  - A. Yes.

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- Q. Could you just read, why don't you read it out loud, the sentence that begins with "a news release"?
  - A. Did you want me to read --
  - Q. Yes. Please read it out loud.
- A. You mean the second paragraph starting "the release"?
  - Q. No. No. Ahead that, a news release?
  - A. I'm looking for where that starts.
- Q. Right above that, after Cambridge, Mass, in the previous paragraph.
  - A. Funny, I just do not see it. I see

it. Yes. A news release on Homburger's report was placed in the press room the day he gave his paper.

It was one page, to which was attached a "corrected copy" of the paper he presented at the 1973 meeting of the Society of Toxicology.

- Q. Okay. Do you think that's an accurate report of what happened back in April of '74?
  - A. Yes. It is.

- Q. Could you take a look at Zahn Exhibit 44, and tell us whether that corresponds to what you described in the portion of Zahn Exhibit 41 that you just read out loud for us?
- A. Yes. This is the paper, Dr. Homburger's paper.
- Q. Going back to the subject we were talking about last time in December of 1998, it goes back that far, the press conference that had been scheduled for Dr. Homburger.

Let me ask you this question, Mr. Zahn: If, back in 1974, you had thought that

what Dr. Homburger was going to do at that press conference was report on the results of his scientific research, as opposed to what you have testified you did believe Dr. Homburger was going to say at that press conference, would you have done anything to affect that press conference going forward?

MR. KRISTAL: Objection, calls for speculation.

A. No. Nothing.

Q. Dr. Homburger if, again, if you had thought, back in April, 1974, that Dr. Homburger, at his press conference that had been scheduled at the FASEB meeting in Atlantic City, that at that press conference Dr. Homburger was simply going to report the results of his scientific research as opposed to what you have testified he was going to say, would you have talked to Mrs. Graves about that?

MR. KRISTAL: Objection, speculation.

A. No. I would have no reason to.

Q. Why do you say that?

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A. Well, press conferences are held for scientists who want to discuss their presentations with the press people, whatever they may be.

They have every right to do so, and it is a very common occurrence at medical and scientific meetings.

- Q. Throughout your career in public relations and as a science writer, have you ever prevented or tried to prevent a scientist from reporting his or her findings?
  - A. No.
- Q. Mr. Zahn, do you recall about how many scientists CTR had funded as of the time you retired in 1993 or so?
- A. An awful lot of them. I just can't recall a specific number. But it increased, it kept increasing each year.

Obviously, the incremental amount each year would raise the total. But there were a lot

of they; and, of course, the dollars increased incrementally each year.

But I can't recall any exact or even approximate figures.

Q. Let me ask the reporter to mark as Zahn Exhibit 45, a copy of the Report of the Council for Tobacco Research USA, Inc., for 1993.

MR. KRISTAL: I think that's 37.

MR. KLUGMAN: Has that already been

marked?

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MR. BELLACOSA: It is listed as 37.
(Discussion off the record.)

- Q. Let me ask you to take a look at Zahn Exhibit 37, Mr. Zahn, and ask if there is some material in there that you can refer to that would give us an idea of how many scientists CTR had funded?
- A. Yes. Through 1993, a total of 1,381 original, I'll paraphrase a bit, scientific studies were supported by the Council; and these 1,381 studies were done by almost a thousand, 985

scientists, at more than 300 medical schools, hospitals and research centers.

- Q. So 980 or so, we can use that as a number of research that CTR had funded up through the time of your retirement?
  - A. Yes.

- Q. Is that acceptable? Does that sound right to you?
  - A. Yes.
- Q. Let's put Dr. Homburger off to one side. Other than Dr. Homburger.
  - MR. KRISTAL: Hold the Homburger.
- Q. Other than Dr. Homburger, over the decades, during which you provided services to CTR, did you ever hear that any of these 980 or so CTR-funded scientists claimed that CTR had interfered with his or her scientific research?

  MR. KRISTAL: Objection.
  - A. No, not a one.
- Q. Other than Dr. Homburger did you ever hear of any situation, during the decades in

which you provided services to CTR, in which any of the 980 or so scientists funded by CTR was going to have a press conference or in some similar way assert that CTR had tried to interfere with his or her scientific research?

A. No.

Q. You testified before about what you did in connection with Dr. Homburger's scheduled press conference at the FASEB meeting in April, 1974, in Atlantic City.

In the years, the decades, in which you provided services to CTR, did you ever take any steps, do anything at all similar, with regard to any other scientific research or work funded by CTR?

A. No. I did not.

MR. KLUGMAN: I would like to ask the reporter to mark as Zahn Exhibit 45 a two-page letter from Dr. Gardner to Dr. Homburger, and it bears Bates numbers ZN 23136 and ZN 23137 and computer numbers 10242824 and 10242825.

(Whereupon, Zahn Deposition

Exhibit No. 45, letter dated February 13, 1974,

from Gardner to Homburger, marked.)

Q. I would like you to take a look at Zahn Exhibit 45, Mr. Zahn. . And in particular, read the portion that begins towards the bottom of the first page, the last full paragraph.

Do you see where it says "the Council and its Scientific Advisory Board"?

A. Yes.

- Q. If you could read that?
- A. All right.
- Q. Through the end of the next paragraph on the second page. I apologize the copy on the second page is poor.
- A. I'm quoting from the letter, reading directly from the letter: The Council -- excuse me again, my sinuses -- the Council and its Scientific Advisory Board were desirous of getting an animal model that might give cancer of the lungs similar to those arising in man and

associated statistically with exposure to cigarette smoke over long periods of time.

R

The hamster did not do this in either your nor Dontenwill's investigations. As we have told you several times, it was for this as well as other reasons ranging from a choice of the mouse over the hamster as the animal to be exposed, to consideration of available facilities for various aspects of the work, that we decided not to support further hamster inhalation work at your laboratory.

As you know, our decision, copy is very bad, has not been to suspend or terminate inhalation exposure work, but rather to, I just can't make it out, but something about rather to do expanded or lead to expanded support of correlated research.

Shall I finish?

- Q. No. That's fine. Go ahead and read it. That's all I want you to read.
  - A. I understand you have sent copies of

your previous letter referring to this conduct to several of the tobacco companies.

I am therefore sending them copies of this letter.

Sincerely, William Gardner, Scientific Director.

Q. As we mentioned before, Mr. Zahn, that notation was placed in this document by lawyers, ZN, means it came from your file.

Do you remember seeing this document back in 1974?

A. No. I don't remember.

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Q. Do you remember having the information that you just read out loud as of the time that you attended the FASEB meeting in April, 1974, in Atlantic City?

And I would note that this document has the date February 13, 1974, a couple of months before.

A. I think I had previously said that I had some memos or letters, copies of them, in

advance of the meeting, that had alerted me to what Homburger was planning to do at the Atlantic City meeting, and this probably was one of the items.

Q. In Plaintiff's Exhibit 11,508, which you were shown before and is your memorandum to Mr. Ramm and Mr. Hoyt about Dr. Homburger's scheduled press conferences, you state:

"Homburger obviously was sore that his contract was not being renewed, because its intended goal had not been attained."

I just want to ask you whether the information that's in Zahn Exhibit 45 relates to the statement that you made in Plaintiff's Exhibit 11,508?

MR. KRISTAL: Objection, speculation.

A. Yes. It does.

- Q. How does it relate? Can you just tie those two together?
- A. Well, Dr. Homburger had a contract to do a particular -- to seek a particular result in

his research, and he failed to do that.

And he was asking CTR for more money to continue to do the same kind of work that obviously was going to produce the same kind of negative finding, that it just failed to produce the results that the CTR was looking for.

Q. Also, in Plaintiff's Exhibit 11,508, let me just have you take a look at it, there is a statement in the fourth full paragraph numbered five where it says:

"Homburger was reporting old material that he had first disclosed more than a year before at the Society of Toxicology meeting."

## A. Yes.

MR. KLUGMAN: Let me show you a couple of documents on that subject.

I would like to ask the reporter to mark as Zahn Exhibit 46 a one-page document ZN 23146 and computer No. 10242834, another document from Mr. Zahn's files. It is a copy of a printed page out of a book apparently.

And I would like to have marked as Zahn Exhibit 47 a five-page document, the first page of which is CTR contracts, 005678 and it runs through 5682, and it has computer numbers 11225419 through 11225423.

(Whereupon, Zahn Deposition Exhibit No. 46, Abstracts: Twelfth Annual Meeting, marked.)

(Whereupon, Zahn Deposition Exhibit No. 47, paper entitled Pulmonary Histopathology of Hamsters Exposed to Smoke, marked.)

- Q. On Zahn Exhibit 46, and, again, that's a document from your files, Mr. Zahn, do you recognize the handwriting on there?
  - A. Yes. That's my handwriting.
  - Q. Can you tell us what it says?
- A. Society of Toxicology, New York, 3-19 to 23, 1973, March 19 through the 23rd, 1973.
- Q. And having seen that, can you tell us what this document is?

Α.	Well, the	ere is an a	abstract and	d the full
text als	o of a pape	er given by	y Dr. Hombu	rger at
that mee	ting, the S	Society of	Toxicology	meeting,
in March	of 1973.			

MR. KRISTAL: Excuse me. Maybe I misheard. Abstract and the full text?

- Q. Let me try to clarify that. What is Exhibit 46?
  - A. 46 is the abstract.

- Q. And what is Exhibit 47?
- A. 47 is the full text of the paper that is described in the abstract.
- Q. And these are abstracts of a paper given where and when? Abstract and a text?
- A. In New York at the meeting of the Society of Toxicology in March of 1973.
- Q. Is there any relationship between Zahn Exhibits 46 and 47 and your statement that we read a minute ago in Plaintiff's Exhibit 11,508 that: "Homburger was reporting old material that he had first disclosed more than a year before at

	the	Society o	f Toxicolog	y meeting":
-		MR.	KRISTAL: O	biection.

- A. This is, when Dr. Homburger did speak at the April, 1974 FASEB meeting, he described the research he had reported on at the Society of Toxicology meeting in March of 1973...
- Q. And does that show up anywhere in Zahn Exhibit 44 that you identified for us a few minutes ago, as a document from April, '74?

Refer to the part after the press release, just open it up and take a look at the rest of the document.

A. Yes. It seems to be the same paper.

Same exact -- it is the same exact paper,

although he had deleted a few words in the April,

'74 presentation.

But it is the virtually the identical paper he had given the year before in New York at the Toxicology meeting.

Q. Mr. Zahn, did Dr. Homburger ultimately have published, in a scientific journal, the

results of his hamster inhalation experiments that were funded by CTR?

A. I believe so, but I cannot recall specifically. He almost would have had to publish, and I believe he did, but I don't remember when or where.

 $\dot{\text{MR}}\,.$  KLUGMAN: Well, let's see if we can refresh that recollection.

I would like the reporter to mark as Exhibit 48 a multi-page document that is a copy of an article called "Strain Differences in the Response of Inbred Syrian Hamsters to Cigarette Smoke Inhalation", and it appeared in the Journal of the National Cancer Institute, in October, 1974.

(Whereupon, Zahn Deposition Exhibit No. 48, paper entitled Strain Differences in the Response of Inbred Syrian Hamsters to Cigarette Smoke Inhalation, marked.)

- Q. Do you recognize Zahn Exhibit 48?
- A. I don't recognize it. It doesn't

strike any cord in my memory, but I'm sure I did see it at one time.

- Q. Looking at it today, can you tell us what it is? And I direct your attention to the fine and very difficult-to-read print in the lower right-hand corner of the first page.
- A. Well, he credits the Council for Tobacco Research for supporting his work, and he also points out the views expressed are his and do not necessarily reflect the opinions of the Council, of CTR.
- Q. And is this a report in a recognized scientific journal?
- A. Oh, yes, this is one of the preeminent journals in the cancer research area.
- Q. And is it a report by Dr. Homburger and other scientists who were associated with him?
  - A. Yes.
- Q. And does it report on CTR-funded research involving inhalation of smoke by Syrian golden hamsters?

1	A. Yes. It does.
2	Q. And is that the research that
3	Dr. Homburger was also reporting on back in 1973
4.	and 1974 at the scientific meetings we have been
5	talking about?
6	MR. KRISTAL: Objection, foundation.
7	A. Oh, absolutely.
8	Q. Just one more thing about
9	Dr. Homburger.
10	Mr. Kristal asked you some questions
11	about a memorandum that referred to some
12	handwritten notes by you of a meeting involving
13	Dr. Sommers.
14	Do you recall any of that?
15	A. No. Refresh my memory.
16	MR. KLUGMAN: I don't need to refresh
17	your memory. I just thought that might help us
18	get started, but let's just go forward.
19	And I'll ask the reporter to mark as

Exhibit 49 a three-page document that bears Bates

stamp number 2N 497 through 499 and the

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1	computer-generated numbers 10220413 through 415.
2	(Whereupon, Zahn Deposition
3	Exhibit No. 49, handwritten notes dated 1/26/73,
4.	marked.)
5	Q. Do you recognize the handwriting on
6	Zahn 49?
7	A. It seems to be mine. Yes.
8	Q. Can you tell us from the document or
9	from your memory what it is referring to?
10	A. It seems to be notes on who said what
11	at the CTR annual meeting in 1973, and notes of,
12	I don't know, notes of what Henry Ramm had to
13	say, just very, very brief things, what
14	Dr. Hockett said, Dr. Sommers and Dr. Gardner.
15	Q. Let me ask you if you can read your
16	notes as to what Dr. Sommers said about
17	Dr. Homburger, the first six lines on the page
18	with the number ZN 498.
19	If you can't read it, tell us that. If
20	you can read it, read it out loud for us,

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A. Homburger, Cambridge, had been reported
informally, he got larynx cancer in hamsters
exposed to smoke, but the laryngeal changes
when I say laryngeal, I wrote LAR, which I knew
meant laryngeal or larynx changes, but it would
be laryngeal changes related were relatively
mild, but not several, it doesn't make sense
yeah, not something and is not cancer, not
even close, and can't be called precancerous.
Only mild dysplasia. Trying to have someone look
at Dontenwill's slides. Meanwhile, Dontenwill
manuscript is coming out, is to be published is
what I meant.

Q. That's what I wanted, just about Dr. Homburger.

Let me just ask you a word in the third line of your notes, the sentence begins "but not" --

A. Yes.

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- Q. Could the next --
  - A. It looks like several. No. It

couldn't be several. My abbreviation for several is SEVL, it is not severe. In other words, the laryngeal, as Sommers described, Homburger's findings, were not severe and were not cancerous, were not cancer.

MR. KLUGMAN: Okay. You can just put that one aside and put Dr. Homburger aside at least for the time being.

THE WITNESS: I'm just going to get

THE WITNESS: I'm just going to get some water.

MR. KLUGMAN: While you are doing that, I'll ask the reporter to mark --

VIDEO OPERATOR: Want to go off the record?

MR. KLUGMAN: No. Is that okay? If we dispense with him for a moment.

Let me ask the reporter to mark as Zahn
Exhibit 50 a one-page document that has a Bates
number 521028856.

(Whereupon, Zahn Deposition Exhibit No. 50, press release, marked.)

Q. Mr. Zahn, take a look at that, but I want to ask you a couple of questions about this, in the context of the testimony you have given before about preparing press releases that were issued by CTR or by Hill & Knowlton or your firm, referring to CTR.

I first want to ask you if you recognize this document at all.

- A. I don't recall this.
- Q. To the best of your knowledge and recollection, Mr. Zahn, is this a press release that was issued by or on behalf of CTR?
- A. Well, whether it was issued or not, I don't know. It certainly was prepared in case some member of the press did call and ask for comment on Freedman's paper.
- Q. I'm just asking you whether you can, either by your memory -- first of all, do you remember anything about the issuance of this?
  - A. No.

Q. Is there anything about this that

suggests to you in this was either was or was not a press release issued by CTR?

I should tell you by the way, this comes from the files of Brown & Williamson, not CTR.

- A. I can't recall -- I certainly never issued this. I would not have written it to the staff, I don't think I would have. And if I were to have issued a press release, it would have been on my press release form.
- Q. Well, let me ask you this way. Maybe you just answered. Does this look like a CTR press release to you as a person involved in those press releases in 1979?

MR. KRISTAL: Objection.

- A. No. It does not. But I have no doubt that it was prepared. Obviously, somebody at CTR prepared it.
- Q. Why do you believe it was prepared by somebody at CTR? I notice it has the initials WK at the top.

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A. I don't see any initials here. It is so shadowed.

Q. Under circ it says WK. I don't know if that's a person or not.

I'm just asking you whether you have any knowledge that this was prepared by anyone at CTR?

- A. No. I do not. I don't remember it. I may have seen it at the time, but I don't remember.it.
- Q. You can put that down. Also during another earlier session of this deposition, I ask you whether you remember Mr. Kristal was asking you some questions about some minutes from 1954 that reported, didn't quote but paraphrased some remarks by Dr. Little. He asked you a few questions.

Hold on one second, and I'll start again. Let me strike that and move on, Mr. Zahn.

Now, you have testified earlier in the deposition about who your client was, when you

were performing various consulting services.

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Let me just ask you to go become over that a little bit and define for us who you viewed your client as when you were performing consulting services for CTR.

MR. KRISTAL: Objection.

- Q. Over the years, either as an employee of Hill & Knowlton or on behalf of your on firm.

  MR. KRISTAL: Objection to the colloguy.
- A. My client was the Council for Tobacco Research.
- Q. And as a consultant for CTR, did you consider it part of your job to promote the sale of cigarettes?
  - A. No, never.
- Q. Did you believe that it was CTR's purpose or understand that it was CTR's purpose to promote the sale of cigarettes?
  - A. No, not at all.
  - Q. Did you, during the years and the

decades, in which you performed various services for CTR, run into and talk to persons from cigarette companies?

- A. Oh, of course.
- Q. And they were in the business of selling cigarettes, is that right?
  - A. Yes.

- Q. And during those years and decades, did you ever run into and talk to any scientists who worked for tobacco companies?
  - A. Oh, yes.
- Q. And during those years and decades in which you performed services for CTR, did you ever participate in or witness any discussions by any of those tobacco company executives or scientists about CTR?
- A. Very difficult to answer that question. I can't pick out anything specific in terms of a meeting or a subject.

But there were, as I recall, generally at meeting of the Research Committee, the

Research Liaison Committee that seemed to have had several different names, yeah, there were discussions related to CTR and the research program.

- Q. Did you ever hear, during those years and decades, I'll try to be a little more specific, did you ever hear during those years and decades any of the tobacco company executives or scientists complain about or criticize CTR in any way?
- A. Yes. I did. Generally, I recall some comments that I suppose you would call, I would call -- excuse me -- criticism.
- Q. Can you just tell us in general the nature of any of those critical comments, the substance of them?
- A. Yeah. Why doesn't CTR do more?

  Complaints that maybe we're not getting enough positive -- we're not getting any positive results from CTR-sponsored research.

Generally, yeah, criticism, complaints,

perhaps; but I don't remember no meetings ever on that, specifically on that subject.

And I would guess those comments that I genuinely remember hearing came from industry people in the public relations/communications area.

- Q. What did you, let me just ask you to explain, when you said "no positive research results", did you mean positive in the scientific sense or research results that would --
- A. Well, to put it bluntly, some of these people, I would guess, not being realistic, why don't we get, can we get some studies that say, no, smoking doesn't cause lung cancer or heart disease or emphysema, whatever, even though they know that really was a silly thing to say.

But things generally of that nature.

Q. Did you ever hear any of those tobacco executives or scientists say in one way or another: We should change CTR or restructure it, so that we can get those kinds of results?

A. Not really in that sense of almost, in effect, let's redo CTR or get rid of it and organize something differently, no.

I think that virtually everybody, I'm sure it was not unanimous, but virtually everybody who held those kinds of positions in the industry, realized that the CTR was doing a good job, and was funding a good program.

MR. KLUGMAN: Let me ask the reporter to mark as a series of three exhibits, which will be Zahn Exhibits 51, 52 and 53, the following documents:

The first is a two-page document, from Mr. Smith to Mr. Ramm, and it has Bates number ZN 22613 and ZN 22614; a second, which would be Zahn Exhibit 52, is a two-page document from Mr. Hardy to several people, copies to several more, including Mr. Zahn, and it bears Bates numbers 2015040862 and 63; and the third document, which would be Zahn Exhibit 53, a one on page letter from Mr. Hardy to persons

1	including Mr. Zahn. It has Bates number
2	2015040864.
3	(Whereupon, Zahn Deposition
4	Exhibit No. 51, letter dated April 29, 1974 from
5	Smith to Ramm, marked.)
6	(Whereupon, Zahn Deposition
7	Exhibit No. 52, letter dated May 31, 1974, from
8	Hardy to Bates, et al., marked.)
9	(Whereupon, Zahn Deposition
0	Exhibit No. 53, letter dated June 18, 1974, from
11	Hardy to Bates, et al., marked.)
12	Q. Just take a look at those and see if
13	they look familiar.
14	These documents, Exhibits 51, 52, 53,
15	do you recognize any of them?
16	A. No. I don't.
17	Q. They refer to a committee, which at
18	least at one point is called the Industry
19	Research Committee, that's in 53.
20	And let me just refer to you in
21	connection with that committee, and let me just
	11

ask you whether you can recall whether such a committee existed?

A. Yes. It did.

- Q. And was this committee, did this have anything to do with the committee or committees you referred to a few minutes ago, when you said something about Research Committees?
  - A. Yes. This is that committee.
- Q. Did you attend meetings of this committee?
  - A. Yes.
- Q. At the meetings of this committee, at one or more of the meetings of this committee was the nature and general structure of the Council for Tobacco Research discussed?
- A. Oh, I suppose, although I would guess that, you know, that those who were at the meeting would have known the nature and general makeup of CTR, would have been long familiar with it.
  - Q. Was CTR one of the topics that was

discussed at these meetings?

A. Oh, yes, in the sense of its research program.

MR. KLUGMAN: Were the members of the committee or these meetings -- let me strike that and ask the reporter to mark as Exhibit 54 a five-page document with Bates numbers running from 03540188 through 01892.

(Whereupon, Zahn Deposition Exhibit No. 54, letter dated September 18, 1974, from Hardy to Bates, et al., marked.)

MR. KLUGMAN: I would ask you to take a look at that, please, Mr. Zahn.

While you do that, I will ask the reporter to mark as Exhibit 55 a four-page document that has two sets of Bates numbers. One set is 03659013 through 9016. The other set is 03659013 through 16.

(Whereupon, Zahn Deposition Exhibit No. 55, report of Research Review Committee dated October 3, 1974, marked.)

- Q. Take a look at as much as you like,
  Mr. Zahn. I'm going to ask you specifically
  about the paragraph numbered two on the fourth
  page of Exhibit 54 and a similar paragraph, the
  same paragraph, on page three of Exhibit 55.
- A. I see the paragraph two on the -- this is 54.
  - Q. Okay.

- A. Zahn 54. Yes.
- Q. Before that, let me ask you, as I meant to do a moment ago, when you went to these committee meetings, back in 1974, that are referred to in Zahn Exhibits 51 through 53, were there discussions of industry-funded scientific research -- let me strike that and start again.

When you went to the meetings of this committee that are referred to back in 1974, I mean the meetings that are referred to in Zahn Exhibits 51 through 53, were there discussions of scientific research funded by the tobacco companies, other than research funded through

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CTR?

- A. Yes. There were.
- Q. And Zahn Exhibit 54, can you see what that is in relation to the committee we have been talking about? Can you tell us what it is?
  - A. I don't understand what you mean.
  - Q. What is the document, Exhibit 54?
- A. Oh, it is a letter from David Hardy to a number of people, including myself, about the Industry.Research Committee, and containing, to which is attached, a report which is headed report of Research Review Committee making certain recommendations for continuation or establishment of a new committee.
- Q. And can you read out loud what that report or draft report said about the Council for Tobacco Research?
- A. Yes. Quoting from this report: "The independence of the Council for Tobacco Research should be respected at all times. It should continue under its present structure and should

be independent of any industry supervision or control."

- Q. Let me ask you to take a look at

  Exhibit 55. Is that a signed version of the

  report by the Research Review Committee that you

  were a member of?
- A. Yes. It is signed by David Hardy, chairman.
- Q. And can you read what that signed version of the report says, with regard to the Council for Tobacco Research?
- A. Point number two: The independence of the Council for Tobacco Research should be respected at all times. It should continue under its present structure and should be independent of any industry supervision or control.

MR. KLUGMAN: I have no further questions at this time.

MR. KRISTAL: Why don't we go off the record briefly. VIDEO OPERATOR: Go off the record. The time is 10:52.

(Discussion off the record.)

MR. KRISTAL: If I may just state for the record, when we broke last time, I'm hoping this doesn't become an issue, when we broke last time, you asked us for an estimation of how much time we would have. Not factored into that was over an hour of questioning by you guys, so we may run past the time we agreed on.

All I'm saying is you asked me, and I said I would have between two and four hours.

And I think we picked four hours based on that, and a little over an hour was just taken off, so, okay. You need time?

MR. KLUGMAN: I don't want my silence to be acquiescence, to suggest acquiescence, but let's go and finish and get Mr. Zahn out of here and then we can argue about things.

(Discussion off the record.)

MR. KLUGMAN: So we're going back to the old order.

VIDEO OPERATOR: Back on the record.

٠	ine time.	18 11:02.
2		EXAMINATION BY MR. BOAS:
,	Q.	Good morning, Mr. Zahn.
	Α.	Good morning.
5		MR. BELLACOSA: If I may

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MR. BELLACOSA: If I may state for the record, which has been stated previously at the at the December 16 deposition of Mr. Zahn at page 371 and 372, that we're operating under the same protocol in accordance with Judge Gwin's December 16, 1998, order granting plaintiffs use of publicly available documents during the depositions.

MR. BOAS: Okay.

MR. KRISTAL: What date was Judge Gwin's order?

MR. BELLACOSA: I have a copy dated December 16.

MR. KRISTAL: Was it the same day as Mr. Zahn's deposition?

 $$\operatorname{MR}$$  . KLUGMAN: Yeah. It was going on right then.

MR. BELLACOSA: Yeah, I think it was stated on the record, and it is just in memorialized form.

MR. KLUGMAN: Remember we were asking, nobody had a written order, and we were asking each other whether we had seen anything yet. So that doesn't surprise me.

MR. BOAS: Anything else anybody would like to put on the record? Okay.

Q. I'm going to go over a little bit of old territory, just to kind of refresh your recollection of things you may have testified to on prior days. I don't want to catch you unaware.

As always, if I say something you don't understand or you want clarified, ask that, ask that I clarify it before you answer and I'll be happy to do that.

As a matter of background, you issued press releases on behalf of the CTR and the Tobacco Institute, correct?

	MF	R. KLUC	GMAN:	оъје	ection	to	the	form
compound.								
<b>A</b> .	I	never	issued	8.6	Leonar	rd :	Zahn	£

- A. I never issued as Leonard Zahn & Associates, I never issued a press release for the Tobacco Institute. The Tobacco Institute was not a client of my company.
- Q. But you did issue press releases on behalf of the Council for Tobacco Research?
  - A. Yes, I did.
- Q. When you issued those press releases, it was your intent and expectation that they come to the attention of the public?

MR. KLUGMAN: Objection to the form.

A. Yes.

MR. KLUGMAN: Again, it is compound.

- Q. Let me ask you separately then. It was your intent that they come to the attention of the public?
  - A. Yes.
  - Q. And it was your expectation?

    MR. KLUGMAN: Objection to the form.

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A. Always, yes.

- Q. And, in fact, they did.

  MR. KLUGMAN: Objection to the form, no foundation.
  - A. Not as frequently as you imply.
- Q. Now, we've gone over this before, not you and I, but in this deposition, the Microbiological Associates project with the Bethesda, Maryland group. You recall that, correct?
  - A. Yes.
  - Q. You recall what the study was about?
- A. Yes. It was a study of animals, mice, exposed to inhalation of cigarette smoke.
- Q. And you issued the press release on behalf of CTR. I think it was 11,503. Here is the exhibit if you would like to take a look at it. It is one that has already been marked in this deposition. I have another copy here. If you can trade copies with me, I think you have the one with my highlighting on it. Maybe not.

1	A. Yes. I did issue this.
2	MR. BELLACOSA: Could I ask what number
3	it was marked as previously?
4	MR. BOAS: 11,503.
5	MR. BELLACOSA: Zahn deposition
6	exhibit?
7	MR. BOAS: We have been marking our
8	exhibits with a consecutive, or not consecutive,
9	but in a single numerical series.
10	MR. BELLACOSA: Okay. I'm sorry.
11	Q. Sure. I think the other day when
12	Mr. Klugman asked you about this particular
13	project, you talked about this as being an
14	example of CTR doing good and you telling people
15	about it. That was your job.
16	Let me break that down into several
17	questions, because I realize I went on a little
18	bit.
19	You started this as an example of CTR
20	doing good, correct?
21	A. I don't recall having done that.

- Q. Would you describe it as an example of CTR doing good?
- A. CTR did what its business was to do. It was supporting a research project.
  - Q. Let me --

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- A. When it supported the project, it had no idea what was going to come out of it.
- Q. Let me refresh your recollection then.

  I'm going to read to you from page 609 of the transcript in this deposition, just in case counsel wants to follow along.
- MR. KLUGMAN: Yeah, if you can hold on just a minute. Let me get my copy, sir, meaning my copy of the deposition.

MR. BOAS: Sure.

MR. KLUGMAN: Do you want Mr. Zahn to see this or just listen?

MR. BOAS: I think it is okay if he just listens. I don't actually have the page from my transcript, I just have my notes on it. I do have this interpret.

Q. Mr. Klugman asked you, and he said:

Just to make sure that we understand, what was
the good from your definition that you were, that
was being done and that you were talking about
during the period that you rendered services to
CTR?

You answered him: Well, it may sound self-serving. Take the MAI study of mouse inhalation work. It sort of denied the claims that had been made about smoke inhalation causing lung cancer, not entirely, but to a fairly large degree, I would guess, not that it was accepted as such, but it did show that.

And was this protecting the industry, defending the industry?

I suppose you could say so. But on the other hand, here was a major scientific study done by reputable scientists at a reputable organization, finding that, reporting that smoke inhalation did not, in these animals, produce lung cancer, and certain interesting if not

strange results came about, that some controls, if I remember correctly, got more lung cancer than smoking animals.

Does that refresh your recollection?

A. Yes. It does.

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Q. I see you have a copy of the transcript in front of you.

Did I accurately read that?

- A. Yes. You did.
- Q. . So getting back to what you asked when Mr. Klugman was asking you questions about your job being reporting the good that CTR was doing, I would like to ask you again:

Would the MAI project be an example of reporting the good things that CTR was doing, in your opinion?

- MR. KLUGMAN: Objection to the form.
- A. Oh, I suppose yes and no. It is so easy to oversimplify that sort of thing.

  Certainly, I did not issue a press release, when the project was begun.

And this was the end of the project, in the sense that this was a huge final, or this huge report, because the contract, the project had been completed.

And the results certainly were very significant, at least in my view, and in the view, I think, of scientists on the CTR staff.

So was that good for CTR? I suppose so; but on the other hand, it was not CTR saying that these findings were good. It was the report itself finding, if you will, negative results from the study.

So this was, in my view at that time, as I recall it, a huge contribution, an important contribution to the whole smoking and health situation.

It was certainly a massive study. If I remember correctly, 10,000 animals being exposed to smoke.

And again, if I remember correctly, control animals, that is animals which were

exposed to everything the smoke-exposed animals were exposed with the exception of the smoke itself, these control animals got a higher incidence of lung tumors than did the smoke-exposed animals.

I cannot explain that. I don't think the people doing the study could explain it. But this is what they found, and this is what they reported.

I thought that was an important finding.

Q. I move to strike the nonresponsive portion of that answer.

Did you actually have a copy of the Microbiological Associates report in your possession before you issued the press release?

- A. I believe I did.
- Q. And did you read through every page of that report and analyze all of the conclusions and essentially go over it with a fine tooth comb?

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1	MR. KLUGMAN: Objection to the form.
2	A. I did not.
3	Q. Did you read the forward?
4	A. Yes. I did.
5	Q. And you cite the forward in the press
6	release, don't you?
7.	And did you ever hear anyone say that
8	the Microbiological Associates project had shown
9	an excess of adenocarcinoma and lesions in the
10	mice who had been exposed to cigarette smoke?
11	MR. KLUGMAN: Objection to the form.
12	A. I can't recall that. But if I may look
13	at it, I just wonder if that was included in the
14	release.
15	MR. BOAS: Sure. Take your time.
16	MR. KLUGMAN: Can I hear the question?
17	Q. Did you ever hear anyone say that the
18	Microbiological Associates project had shown an
19	excess of adenocarcinoma and lesions in the mice
20	who had been exposed to cigarette smoke?
21	MR. BELLACOSA: Objection to the form.

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1	MR. KLUGMAN: Objection to the form.
2	You can answer. Did you want him to refer to
3	anything in the release? Or is this an
4	independent question?
5	MR. BOAS: Not specifically.
6	A. If I may, it is pronounced -
7	adenocarcinoma.
8	Q. Thank you. I'll try remember that.
9	A. I pronounced it adeno many, many years
10	ago, when I first encountered it, so I can
11	understand that.
12	MR. KRISTAL: I think it is a tomato
13	tomatoe situation. I've heard experts refer to
14	it as adenocarcinoma.
15	THE WITNESS: Well, they are wrong.
16	MR. KLUGMAN: But other than that, it
17	is okay.
18	THE WITNESS: Other than that.
19	MR. KLUGMAN: I'm not sure where we
20	are.
21	Q. I was waiting for Mr. Zahn to look at
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the document before he answered the question.

A. Go ahead.

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Q. I'll try to ask the question again using the right pronunciation.

Did you ever hear anyone say that the -- let me be even more specific, perhaps I can cure the defect that counsel pointed out.

At the time that you released this report, in and around the time, the press release, sorry, was released, did you hear anyone say that the Microbiological Associates project had shown an excess of adenocarcinoma and lesions in mice that had been exposed to cigarette smoke?

MR. KLUGMAN: Objection to form.

- A. I don't recall that, no.
- Q. You testified you know who Dr. Carol Henry is, correct?
  - A. Yes.
- Q. Did you ever hear that Dr. Henry thought that the research done by MAI tended to

support the theory that smoking causes lung cancer, even though it wasn't conclusive?

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MR. KLUGMAN: Objection to the form.

- A. I'm trying to -- maybe vaguely, I remember someone, God knows whom, saying so -- but I'm not sure -- that she had that feeling. I'm not sure.
- Q. Do you recall generally when you had heard that?
  - A. No. No. I do not.
- Q. Did you ever hear that she had stated that the research done by Microbiological Associates was terminated prematurely from a scientific point of view?

MR. KLUGMAN: Objection to form.

- A. No. That I don't recall.
- Q. Did anyone ever tell you that Dr. Henry didn't agree with the conclusions stated in the forward to the Microbiological report?

MR. KLUGMAN: Objection to the form.

A. Not that I can recall. No. I'm not --

1	no, I just don't remember.
2	Q. Now, you knew that Dr. Sommers wrote
3	the forward, correct?
4	A. I think I did, yes.
5	Q. Did you know that he wrote it, or did
6	you at any time learn that he wrote it without
7	consulting the researchers who wrote the rest of
8	the report?
9	A. I knew nothing of the circumstances
10	surrounding his writing it. I knew that he did
11	write it.
12	Q. You know who Edwin Jacob is, right?
13	A. Yes.
14	Q. Who is Edwin Jacob?
15	A. He was counsel to CTR.
16	Q. Did you know that the forward to the
17	microbiological report was written with input
18	from Mr. Jacob?
19	MR. KLUGMAN: Objection to the form.
20	A. I never heard that, that I can recall.

Mr. Jacob wasn't a scientist, was he?

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1	A. He is a lawyer.
2	Q. But is he also a scientist?
3	A. I don't believe so.
•	MR. BOAS: Let me show you what we're
5	going to mark as Exhibit 11,549.
6	I'm not certain if this has already
7	been entered in this deposition. It may have.
8	MR. KLUGMAN: Yeah, I believe this is a
9	privileged document.
10	MR. KRISTAL: You mean you are asserting
11	a privilege?
12	MR. KLUGMAN: I mean both,
13	Mr. Kristal. Let's make that definitive, but he
14	can look at the document in the mean time.
15	MR. BELLACOSA: Off the record.
16	VIDEO OPERATOR: Going off the record.
17	The time is 11:18.
18	(Discussion off the record.)
19	MR. KLUGMAN: Back on the record. Back
20	on the tape.
21	MR. BOAS: Okay.

 $\label{eq:VIDEO OPERATOR: Back on the record,}$  the time is 11:20.

MR. KLUGMAN: I've taken a look at Plaintiff's Exhibit 11,549. It is a privileged document. It is a document that CTR has, to the best of my knowledge, not produced voluntarily to anyone.

Its production was compelled by Congress, and that's how the plaintiffs have gotten shold of it.

We can go ahead and proceed under the rule set forth in the Richardson case, but as I have told Mr. Kristal in discussion we had off the record, I don't believe that this document can be used in connection with the Ohio Iron Workers case, and I don't believe that the portion of the transcript that asks about it can be used in the Ohio Iron Workers case.

The reason for that is that I don't think Judge Gwin's -- I meant no offense to either of you, I have met you and I have not met

him -- I don't believe Judge Gwin's December 16, 1998 order governs CTR's privileged document, because CTR was not then and is not now a defendant in that case.

So as I understand it, we're going to go ahead with Mr. Boas asking some questions.

Mr. Kristal can remain here in his role as counsel working with Mr. Boas in the Richardson and Reed -- well, in the Richardson case. But this is off limits in Ohio Iron Workers.

MR. KRISTAL: With respect to the Iron Workers case, I'm not going to go into a lengthy dispute as to whether it is or isn't or how it was produced or not produced, I just don't want my silence to be deemed to be any sort of acquiescence in what you just said.

MR. KLUGMAN: Go ahead, Mr. Zahn.

Do you have a copy for us?

MR. BOAS: I passed it over.

THE WITNESS: It is this one here.

Q. 11,549 is the number at the bottom.

	CONFIDENTIAL UNDER SEAL 764
1	A. I see.
2	Q. Just to be sure you have the right
3	one.
4	A. Yes.
5	Q. Have you had a chance to look it over?
6	A. Not really.
7	Q. Okay. Why don't you do that now then.
8	A. Okay. I have looked through it.
9	Q. Okay. You can see it is a letter from
10	Mr. Gertenbach to Mr. Jacob, maybe Gertenbach, I
11	don't mean to mispronounce his name either. Is
12	that correct?
13	A. Gertenbach, yes.
14	Q. Can you read aloud the first sentence
15	under "Dear Ed"?
16	A.
17	REDACTED
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19 20	Q. Actually, if I could ask you to read
21	also the next sentence.
<b>4</b> 1	A. REDACTED
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## REDACTED

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So Dr. Sommers changed the title of the Microbiological Associates final report according to this?

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MR. KLUGMAN: Objection to the form, if you are suggesting he is doing anything other than reading what the document says.

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Well, I guess the title of the -- it is hard to say. I guess the new title is Chronic Exposure, looking from the second page of this document, Chronic Exposure of Mice to Cigarette Smoke, but he does say Final Report of Research Performed Under Contract Entitled \*Smoke Inhalation Studies in Mice."

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Now, that is the same thing. I guess the top one is the title of the book. I'm not sure. I don't remember the book or what exactly it said.

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W. Z. Fair enough. Now, you have

demonstrated an excellent ability in writing handwriting, far better than mine today, and I was hoping that you might be able to read the handwriting at the right side of the page, to the right and a little bit above.

A. The top page, yes, I see it.

I think you misstated the record, misleadingly stated the record, the handwriting I asked him to read was his own.

MR. BOAS: I believe some was his own, but not all of it.

MR. KLUGMAN: But in any event, I believe all of it was, and you haven't established whether it is or isn't. You haven't asked him whether he has seen the don't. But you go ahead and conduct the deposition. I think it is misleading to suggest that reading somebody's handwriting is like reading his own handwriting. That's what you just did.

Q. Okay. Can you read the handwriting at

1 | the right side of the page?

- A. Yes. It is not my handwriting.
- Q. Do you know whose it is?
- A. No. I do not.
- Q. Can you tell me what it says?
- A. It seems to say:

## REDACTED

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Q. Let me apologize for having had you read that there. I may be able to make it easier for you. I think you got it mostly right.

I found I wasn't able to read it, and so what I have done here, is I have blown up what we would like to mark as 11,549-A.

Counsel, if you can verify that it is an accurate copy of the original document.

MR. KLUGMAN: I don't know how we can do that, but go ahead.

MR. BELLACOSA: Object to the form.

Accurate copy perhaps of a portion of the document, but that remains for maybe a handwriting expert, which I don't think this witness is.

MR. BOAS: That's correct.

- Q. Just from your visual inspection, does it look like an enlarged copy of that section of the document?
- A. I feel like the photo interpreters that used to do work on material my squadron used to collect flying over Japanese positions many years ago.

REDACTED

Q. And if you look also at the last paragraph of the text of the letter, you can go

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1	York have, at least people who aren't in the
2	tobacco industry have.
3	MR. KRISTAL: Only if they don't commit
4	a crime fraud of some sort.
5	MR. KLUGMAN: I didn't mean to argue
6	that point.
7.	MR. KRISTAL: Well, why are you stating
8	it?
9	MR. KLUGMAN: Can I finish,
. 0	Mr. Kristal?
.1	MR. KRISTAL: Sure.
. 2	MR. KLUGMAN: I know you are assisting
.3	the Maryland people, but let me go ahead and make
4	my point.
. 5	I would have a concern about Mr. Zahn
L 6	being asked questions about privileged
. 7	communications outside this document.
18	MR. BOAS: Okay.
19	MR. KLUGMAN: I don't think your
20	question is going to elicit that, because it
21	doesn't appear that he has any information.
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MR. BOAS: At this point, I'm asking what the exhibit says.

MR. KLUGMAN: I think that makes the question pointless, but also not an invasion of privilege, but go ahead.

MR. BOAS: Okay. So I was directing your attention to the last --

MR. KLUGMAN: Let me point out to Mr. Kristal, the ordinary rules are you make the crime fraud showing, and then you get to use the privileged document.

That's the way it works as far as I am aware. You don't arrogate that, counsel doesn't arrogate that decision to himself. Go ahead, sir.

- Q. Thank you. I'm sorry, I would like to direct your attention to the last sentence right there on the text of the message, not the handwritten notes at the bottom.
  - A. You mean the one I just read?
  - Q. Right. And the question that I had

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asked before the objection was:

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REDACTED

MR. BELLACOSA: Objection to the form.

MR. KLUGMAN: Objection. No

foundation.

- A. I can read the thing. That's what he appears to -- this is what he wrote. Gee, I can't interpret what Gertenbach had in mind, but he says what he has in mind here. It seems rather clear.
- Q. Okay. And from this document, it appears that Mr. Jacob answered it, doesn't it?

MR. KLUGMAN: Objection to the form.

MR. BELLACOSA: Objection to form.

- A. No. I don't see a letter from Jacob or anything like that.
- Q. I'm referring, and maybe I can direct your attention to the handwritten note that we

just puzzled through, it says Ed Jacob?

A. It seems so.

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- Q. That he had some response?

  MR. KLUGMAN: Objection to the form.
- A. I guess you better ask Gertenbach. I don't know if that is Gertenbach's writing or not. I can't speak to that. I can read it. But who wrote it, I don't know.
- Q. Were you aware of Mr. Jacob's involvement with the final galleys and forward of the MAI report?
  - A. No. I was not.

MR. KLUGMAN: Can I get an objection to the form of that? I'm sorry, I didn't get a chance to do that.

 $$\operatorname{MR}.$$  BOAS: Sure. Let me show you what I have marked as Exhibit 20,340.

MR. KLUGMAN: Because of the problem we had before -- he can see it anyway. You are in Richardson, so that's all right.

MR. BOAS: Let me state for the record

that this is a letter from Shelby Sommers to Alan W. Frankenfield, Jr., at Field, Rich & Associates, dated August 29, 1984.

MR. KLUGMAN: Can I just be clear, and I apologize for this, but because we had a portion of the discussion on the record and a portion off the record, I want the regard to be clear that we are objecting to the use of Plaintiff's Exhibit 11,549 on the grounds of attorney-client privilege, that is CTR is objecting to that, and the questioning proceeded in Richardson in light of the orders in that case.

As I say, we had part of that discussion off the record and part on, and I want to make sure the record reflects my objection, which I think we all understood today, but I want the record to be clear.

MR. BOAS: Okay. I think you have made your record.

MR. BELLACOSA: Do you have another copy

1	of these documents so I can follow along?
2	MR. BOAS: Unfortunately, this is my
3	only copy.
4	Q. Have you had a chance to look at the
5	document, Mr. Zahn?
6	A. Yes. I have.
7	MR. BOAS: Are there any objections with
8	respect to this document before I continue?
9	MR. KLUGMAN: There are not.
10	Q. Okay. Now, you can see from this
11	document, can't you, that Field, Rich &
12	Associates is the publisher who was handling the
13	MAI report?
14	A. Yes.
15	Q. And this document specifies changes to
16	the Microbiological Associates report, doesn't
17	it?
18	MR. KLUGMAN: Objection to the form.
19	A. Yes.
20	Q. This is from Charlie Sommers, who was
21	the one who eventually signed the forward to the
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MR. KLUGMAN: Objection to the form. Contrary to the testimony and the evidence.

- A. Yes.
- Q. And do you see that according to Roman numeral I on the first page, Dr. Sommers specified that the title should be changed?
  - A. Yes.
- Q. And then if you skip to the second page, down to the number 8 in parentheses, do you see where it reads: Galleys 40 to 43. Ed's corrections.
  - A. Yes.
- Q. Were you aware that someone named Ed was making corrections to the Microbiological Associates report?

MR. KLUGMAN: Mr. Boas, objection to the form. No foundation.

- Q. I think we can move on to a different subject.
  - I would like to ask you a little bit

about the grand jury proceedings that you were involved with.

I would like to know, were you granted immunity in connection with your grand jury testimony?

MR. KLUGMAN: Objection to the form. Not objection to the form, objection to the question.

Let me object and state for the record that I have discussed with Mr. Zahn his rights to grand jury secrecy, and let me discuss that with him for just a moment off the record.

MR. BOAS: Sure. Let's go off the record.

VIDEO OPERATOR: Going off the record, the time is 11:36.

MR. KLUGMAN: Let's go back on the record.

VIDEO OPERATOR: Back on the record, the time is 11:37.

MR. KLUGMAN: I have consulted with

Mr. Zahn, and he can answer questions in this area. I'm going to object to the form of the question. I think it calls for something that, if not a legal conclusion, is at least technical in nature.

But he can go ahead and answer.

- Q. Do you want me to read the question again,?
  - A. Yeah, would you, please.

Q. Were you granted immunity in connection with your grand jury testimony?

MR. KLUGMAN: Objection to the form.

- A. I did not testify before a grand jury, and I had no, made no requests and was not offered immunity.
- Q. When you say you weren't offered immunity, do you mean in connection with grand jury testimony, which, of course, you said you didn't testify, or do you mean in general you were not offered immunity?

MR. KLUGMAN: Same objection.

Α.	That's	right
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Q. Now, I'm going to ask you a question, and I want you to wait for your attorney's response before you answer it, just so we don't end up anywhere we ought not be.

But what was the substance of the discussions between yourself and either the Justice Department or the grand jury?

MR. KLUGMAN: Can you split that up? I think he told you he had no discussions with the grand jury.

Q. Okay. What was the substance of the discussions between yourself and the Justice Department, with respect to the tobacco industry?

MR. KLUGMAN: Go ahead. I have advised Mr. Zahn that he does not have to answer that question, but Mr. Zahn --

 $\mbox{MR. BELLACOSA:}\ \mbox{I'm going to object to}$  the form.

MR. KLUGMAN: But Mr. Zahn wishes to

answer that question. I object to the form of the question as well, but he can go ahead and try to answer it in that form.

- A. As I recall generally, pretty much, most of what has been covered in Mr. Kristal's questions and your questioning.
  - Q. Do you know why you were not indicted?

    MR. KLUGMAN: Objection to the form.
- Q. Let me ask you a foundation question first.

Do you know if you were indicted?

- A. I was not indicted. I could not have been indicted, because I didn't appear before the grand jury. I understand that's how it works.

  I'm not sure.
  - Q. Do you know why?

    MR. KLUGMAN: Objection to the form.
  - A. Why I was not what?
  - Q. Indicted.

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A. Really. Because I was not called before the grand jury.

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1	MR. SCHEINER: Because he is innocent.
2	MR. BOAS: Counsel's assertions aside, I
3	would like to hear it from the witness.
4	MR. KRISTAL: Nor does that mean you
5	can't be indicted.
6	MR. SCHEINER: You can be indicted if
7	you are innocent, too.
8	MR. KLUGMAN: Let's go ahead. Are we
9	finished, or do we have to agonize over this any
10	further? . When I say agonize, I don't mean
11	Mr. Zahn. I mean us lawyers in terms of whether
12	you are doing anything across the bounds of
13	propriety.
14	MR. BOAS: That's why I instructed him
15	the way I did.
16	MR. KLUGMAN: I understand. If you are
17	finished, we are finished.
18	Q. Since December 1st, last year, which is
19	the day we started, I believe, and counsel will
20	correct me if I am wrong, we started this
21	deposition, have you discussed the substance of

your testimony with anybody outside this room?
MR. KLUGMAN: You can answer that
question yes or no, Mr. Zahn. I don't know if
you mean substance of what you have testified to
or what you will testify or may testify about or
both.

Q. So that there is no question, let me break it down into a few smaller, more narrowly-focused questions.

Since December 1st of last year, have you discussed the things that you have said here on the record with anyone?

MR. KLUGMAN: You can answer that yes or no, Mr. Zahn.

A. It is hard to remember. I did not have any long or detailed discussions with my lawyers. Any discussions we had, whatever we talked about --

MR. KLUGMAN: Don't.

THE WITNESS: I just want to make a few points. It was on the phone.

MR. KLUGMAN: Don't tell him, at this point, Mr. Zahn, don't tell him what we talked about, except to answer his question yes or no, if you can.

- A. It is hard for me to say yes or no. Well, I will say yes, but nothing substantive really, nothing specific.
- Q. Well, perhaps you can explain to me what you mean by "not specific"?

MR. KLUGMAN: Not if in explaining it you are going to tell Mr. Boas anything you have discussed with counsel. Please don't do that, Mr. Zahn. You have an attorney-client privilege and you don't need to do that.

MR. BOAS: It is my understanding that it is improper for you to discuss the substance of the witness's testimony once the deposition has started, and I think that any discussions you have had about the substance of his testimony since the deposition started on December 1 of last year would not be so protected.

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1		MR. KLUGMAN: Couldn't disagree with
2	you more,	Mr. Boas. You have stated your
3	position.	I have given my instruction.
4		Do you understand where we are,
5	Mr. Zahn.	
6		MR. BOAS: Perhaps I should have said
7	improper.	
8	٥.	In any event, have you discussed wit

Q. In any event, have you discussed with your attorney or with any attorney in this case and the substance of your testimony since December 1 of last year?

MR. KLUGMAN: I think you asked the question, and he answered to the best of his ability. Go ahead and answer it again.

- A. I will have to give you the same answer I gave just a moment ago.
- Q. Did you discuss the substance of proposed testimony, which is to say, something that you planned to say either today or at some prior session of this deposition, with your attorney since the start of the deposition on

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1	December 1st of last year?
2	MR. KLUGMAN: Objection to the form.
3	Again, Mr. Zahn, if you can answer that yes or
4	no, fine; but don't tell him about any
5	discussions you have had with counsel.
6	A. Yes.
7	MR. BOAS: I understand an objection is
8	coming.
9	Q. What was the substance of those
١٥	discussions?
11	MR. KLUGMAN: Don't answer that. That
12	is privileged, and you don't need to tell him,
13	Mr. Zahn.
14	MR. BOAS: I have no further questions.
15	MR. KRISTAL: Go off the record a
16	moment.
17	MR. KLUGMAN: Sure
18	VIDEO OPERATOR: Go off the record for
19	a moment. The time is 11:44.
20	(Discussion off the record.)
21	VIDEO OPERATOR: We'll go back on the
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1	record, the time is 11:46.
2	VIDEO OPERATOR: Back on the record,
3	the time is 11:46
4	EXAMINATION BY MR. KRISTAL:
5	Q. Once again, good morning, Mr. Zahn.
6	This is Jerry Kristal.
7	A. Good morning.
8	Q. I take it as a public relations person,
9	scientific writer, you believe in free speech.
10	· MR. KLUGMAN: Objection to the for the
11	purpose.
١2	Q. Do you believe in free speech?
L 3	A. As an ordinary citizens, I believe in
14	free speech.
15	Q. Did you believe in free speech in
16	1974?
17	A. Well, I guess I've believed in free
18	speech, since I could first begin to believe in
19	things. However far back that is, I don't
20	remember.
21	Q. And when you went to the Federation of
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American Societies for Experimental Biology
meeting in April of 1974, you believed that
Dr. Homburger was going to say something negative
about the Council for Tobacco Research in a press
conference, correct?

MR. KLUGMAN: Objection to the form.

- A. Well, it was more than negative. I believed he was going to make some false accusations about my client.
- Q. And you believed that he was going to tell the press that the tobacco industry was attempting to suppress important scientific information about the harmful effects of smoking, and he was going to point specifically at CTR. Do you recall that?
  - MR. KLUGMAN: Objection to the form.

    MR. BELLACOSA: Objection to the form.
- A. I believe he was going to say that the Council was trying to censor his research, and he was -- well, what more could that be? That's a serious charge.

Q. Let me show you what we have already marked several times 11,508, your memo of April 22, 1974.

And if you look at the last two sentences of the second paragraph begins with the word "he", do you see that?

A. Yes.

- Q. And the "he" refers to Dr. Homburger, correct?
  - A. Yes.
- Q. "He was to have a news release with him and was to tell the press that the tobacco industry was attempting to suppress important scientific information about the harmful effects of smoking. He was going to point specifically at CTR."

Do you see that?

- A. Yes.
- Q. That's what you wrote in April of 1974, correct?
  - A. Yes, I did.

Q. And	that was	about ten days after the
conference in	Atlantic	City had concluded,
correct?		
MR.	KLUGMAN:	Objection to the

A. I believe so.

arithmetic.

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- Q. Now, Dr. Homburger certainly had the right to call a press conference, correct?
  - A. Of course.

MR. KLUGMAN: Objection to the form.

- Q. And he certainly had the right to express his views, his views, as to whether or not his research was being suppressed. Do you disagree with that?
  - MR. KLUGMAN: Objection to the form.
- A. He had his right to say whatever he wanted, anything at all.
- Q. And do you believe you had the right to have his press conference, where he was going to say whatever he wanted, cancelled?
  - MR. KLUGMAN: Objection to the form.

- A. I don't believe I had the power to cancel his press conference.
  - Q. Well, you arranged for the press conference to be cancelled, correct?

MR. KLUGMAN: Objection to the form.

- A. I don't believe I had that power, since I was not affiliated with the sponsoring organization or just had no ability to do anything of that kind.
- Q. Why don't you look at the last paragraph on the first page of your April 22, 1974 memo. The last sentence begins with the word "she", correct?
  - A. Yes.

- Q. And she is Judy Graves, who was one of the individuals affiliated with the sponsor of the conference?
  - A. Yes.
- Q. And you wrote at that time: "She agreed the proposed press conference would serve no useful purpose, and with her okay, I arranged

later	that	eveni	ng f	or it	to	be	cancelled."
	1	Do you	see	that	?		

A. Yes.

- Q. Was that true at the time you wrote it?
- A. Yes, a little self-puffery, I guess, yes, but that's what I wrote.
- Q. Do you believe you had the right to arrange to have Dr. Homburger's press conference cancelled?

MR. KLUGMAN: Objection to the form. Misstates the document, been asked and answered.

A. When I say I arranged to do it, I did not have the power to do it.

But, certainly, some of the information I brought to the attention of Ms. Graves and her organization persuaded them to cancel the press conference.

- Q. And you believe you had that right?
  MR. KLUGMAN: Objection to the form.
- A. Absolutely.
- Q. Now, one of the concerns that you had

was that Dr. Homburger's criticism of the Council for Tobacco Research would be reported in the press, correct?

MR. KLUGMAN: Objection to form.

- A. The information I had was that he was not going to criticize, he was going to accuse my client of having done, in a scientific sense, a very terrible thing.
- Q. And you disagreed with whether that occurred or not, correct?

MR. KLUGMAN: Mr. Kristal, I'm going the object to the form here. I've given you a lot of latitude. I don't think leading questions are proper on this redirect. I'll object on that basis.

- A. My belief was that Dr. Homburger was going to lie about his dealings with my client.
- Q. And rather than responding at either your own press conference, you chose to have his cancelled?

MR. KLUGMAN: Objection to the form.

1	<b>\</b>
1	Q. Let me strike that. Did you choose to
2	conduct your own press conference after he held
3	his to contradict whatever he said?
4	MR. KLUGMAN: Objection to the form.
5	A. Never even considered that option.
6	Q. Now, Dr. Homburger, according to your
7	memo of April 22, 1974, which was Z-41, Zahn 41,
8	Mr. Klugman had shown you that?
9	MR. KLUGMAN: Oh, I'm sorry.
. 0	Q. You see that?
. 1	A. Yes.
. 2	Q. Now, down at the bottom, you are
. 3	reporting to Mr. Hoyt what Dr. Homburger actually
. 4	presented at the time that he was giving his
. 5	paper, right? Down at the last sentence, it
6	begins
7	A. Yes.
8	MR. KLUGMAN: You have lost me,
9	Mr. Kristal. I was getting the document. Where
2 0	are you?
21	MR. KRISTAL: The last sentence of the
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MR. KLUGMAN: In actual presentation?

3 MR. KRISTAL: Right.

- Q. You were reporting to Mr. Hoyt not about any press conference Dr. Homburger had, but about the presentation of his paper, correct?
  - A. I think I am describing the release.
- Q. You write here: In actual presentation of his paper, Homburger opened as follows and you have a quote from Homburger.
- A. Oh, I was looking at the paragraph before. Yes, that's true. He actually got up in the meeting before his peers, and this is how I described it.
- Q. This was not the press conference that had been cancelled, though, correct?
  - A. There was no press conference.
- Q. Okay. And the reason there was no press conference, was because you had gone to the sponsors, correct?

MR. KLUGMAN: Objection to the form.

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Q. You quote Dr. Homburger at the time as saying:

"Since my good friend, the Research
Director of the Council for Tobacco Research, has
asked me to withdraw the paper that has been
published in abstract form, and since I do not
wish to violate my contractual obligations, at
the same time I do not wish to disappoint this
audience, I have put together some things that
have been previously published, with the
permission of the Council for Tobacco Research,
which, until a very short time ago, supported
these studies."

Do you see that?

- A. Yes.
- Q. So the paper that Dr. Homburger presented at the meeting in April of '74 was information that had been previously published, right?

MR. KLUGMAN: Objection to the form.

1	A. Yes.
2	Q. And he did that, because of the
3	conflict with CTR, correct?
4	MR. KLUGMAN: Objection to the form.
5	A. You will ask to ask him what his
6	motives were.
7	Q. Isn't that what you wrote he said?
8	MR. KLUGMAN: Objection to the form.
9	A. This is I quote him.
10	Q. Right.
11	A. So that was his explanation.
12	Q. Now, you were shown a document last
13	time by Mr. Klugman, and it is Zahn 40. Let me
14	give you my copy.
15	This is entitled Statement of Policy
16	Containing Conditions and Terms Upon Which
17	Project Grants Are Made.
18	You see that?
19	A. Yes.
20	Q. And in that, I think the thrust of the
21	testimony was grantees are free to publish their

work; is that fair to say?

A. Yes.

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- Q. Now, Dr. Homburger had to get -MR. KLUGMAN: Excuse me. I just want
  to find a copy of it.
- Q. Dr. Homburger had to get permission from CTR to publish his paper, correct?
- A. Yes. Well, I assume so under the terms of his contract. He was not a regular grantee.
- Q. Okay. That is my point. You didn't mean to tell this jury, by utilizing the document that you hold in your hand, that all people who received money from CTR, were free to publish their findings, correct?

MR. KLUGMAN: Objection to form.

- Q. Did you mean to say that?
- A. It all depends on the terms of the contract.
- Q. Okay. People who testified contracts from the CTR had to get CTR approval to publish, correct?

A. I don't think I have ever seen a contract, a CTR contract, so I really can't answer you fully on that.

- Q. So the document that you have in your hand, Exhibit 40, relates only to grantees as opposed to people who hold contracts.
- A. I don't know. I haven't read this in probably 30 years.
- Q. Well, it refers in its title to grants, correct?
- A. Yes. This may well refer just to grantees.
- Q. Okay. Now, we certainly know Dr. Homburger. Did he have a grant or a contract?
- A. Well, in the matter we're discussing, I believe it was a contract. Whether he started as a grantee or as a contract, I just don't know. I don't remember.
- Q. Now, if you look at what was shown to you this morning, Exhibit 45, Dr. Gardner's

letter to Dr. Homburger, February 13, 1974, I can show you my copy.

A. Okay.

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Q. Dr. Gardner wrote, why don't you read that sentence that begins with "therefore" that I highlighted a portion of.

MR. KLUGMAN: Where are you, so I know.

MR. KRISTAL: In middle of the first paragraph, middle of the second paragraph.

MR. KLUGMAN: Okay. Thanks.

- A. Yes. I see that.
- Q. Can you read that out loud?
- A. Yes. "Therefore, we must insist on your observing your contract obligations not to publish without our approval."
- Q. Let me show you Z-50, which was the statement regarding what to say when this paper that was published in the New England Journal of Medicine had some out. Do you see that?

MR. BELLACOSA: Object to the characterization of the document.

1	A. Yes.
2	Q. Well, is that a document that is
3	prepared so that if someone were to contact CTR
4	about that article, they would have a prepared
5	statement to give them?
6	MR. BELLACOSA: Objection to form.
7 .	MR. KLUGMAN: Objection to the form.
8	No foundation.
9	MR. KRISTAL: Well, I'm asking.
10	A. I can't remember whether I prepared
11	this thing.
12	Q. Right.
13	A. But I would just say that apparently
14	what you just said is so, this is our statement
15	when asked for comment.
16	Q. Now, could you read the sentence that I
17	have highlighted at the bottom of that statement,
18	prepared for comment?
19	A. It may or may not be hazardous, and
20	that's where we are.

So the statement that was being given

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to the public, if they asked for comment on this

New England Journal of Medicine article in 1979

was: It may or may not be hazardous?

MR. KLUGMAN: Objection, given by

MR. BELLACOSA: Objection to form.

whom?

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MR. KRISTAL: Given by whoever that document was circulated to.

- A. What is it that may or may not be hazardous?
- Q. Why don't you read it? They are talking about cigarette smoking, correct?
- A. Oh, yes, it would be a smoking and health inference, certainly. And the preceding sentence: "This and so much else in the medical literature, just shows that we have a great deal more to learn before we can reach any solid conclusions about smoking. It may or may not be hazardous, and that's where we are".
- Q. And that was the public position taken by CTR in 1979; was it not?

1		MR. KLUGMAN:	Objection.	I don't know
2	what the	"that" is.		

- That's what the statement, this is what the statement says, quoting directly from it.
- And that was, tell me, did the CTR, up until the time you retired in 1994, ever take a position contrary to what is stated there, that it may be hazardous or not, may or may not be hazardous?

MR. KLUGMAN: Objection to the form.

- You mean did the Council ever say smoking may be hazardous period?
  - Q. Yes.

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- A . ' No.
- And the position was always may or may not be hazardous, always when you were there?

MR. KLUGMAN: Objection to the form.

Not as such, except perhaps in this isolated instance. Nobody could say, as far as the Council was concerned, well, we know that smoking causes lung cancer. It is always the

point of there is a hell of a lot or a lot more research to be done before you can say with certitude that smoking does cause this, or does not cause it.

Q. Now, you testified, if you want to look at, I gave you earlier a copy of the December 16 transcript. Why don't you turn to page 594 to 596.

You were discussing at that point Exhibit 29, which was the first exhibit that Mr. Klugman had given to you dated April 9, 1962.

- A. Where does that start, Mr. Kristal? We are on page five -- wait a minute. I'm on 594. Wait a minute. I guess it is 594.
- Q. And Exhibit 29 was the memo from Dr. Brady to Dr. Little. You see that here?
- A. Is that in this corner here? Where is the reference to this on here?
- Q. Let me show you. Page 594, line seven, Mr. Klugman says: Let me ask you this: Take a

look at the document I'm going to mark as, keep these serial and make this Exhibit 29. And then he starts talking about Exhibit 29, which you also have in your hand.

- A. Yeah. Yes.
- Q. Are you with may so far?
- A. Yes.

- Q. Now, on page 596 you made a statement about funding for CTR research incrementally going up over the years, and there were fairly substantial increases every year. Do you see that?
  - A. Yes.
  - Q. That's not true, is it?

    MR. KLUGMAN: Objection to the form.

    MR. BELLACOSA: Object to the form.
  - Q. Is that true?
  - A. As far as I can recall that's true.

MR. KLUGMAN: Are you asking whether his testimony is true or whether what you said is true.

1	Q. Yes. I'm asking whether your testimony
2	that the money for research that incrementally
3	increased over the years and that there were
4	fairly substantial increases over the years is
5	true?
6	MR. BELLACOSA: Objection to the form.
7	A. I believe so, certainly for most of the
8	period. As I recall it, there were large sums of
9	money involved.
10	Q. Now, look at the second page of
11	Exhibit 29.
12	A. Oh, this one here?
13	Q. Yes, sir. And on the second page,

- Yes, sir. And on the second page,
- Dr. Baker is making some recommendations. 14
  - You mean Brady, Dr. Brady.
  - I'm sorry. Dr. Brady is making some recommendations, correct?

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- Why don't you read out loud what that first recommendation is?
  - To increase the TIRC budget to five

1	million dollars per annum.
2	Q. So TIRC was the predecessor to CTR,
3	right?
4	A. Right.
5	Q. So Dr. Brady was recommending in 1962
6	that the budget for research be increased to \$5
7	million a year, right?
8	MR. KLUGMAN: Objection to the form.
9	A. Yes.
10	Q. Let me show you Exhibit 31, which
11	Mr. Klugman had marked last time, which is the
12	minutes of the Special Meeting of the Board of
13	Directors dated December 10, 1975.
14	You see that?
15	A. Yes.
16	Q. Why don't you turn to the Bates number
17	that ends at the bottom 218, which has a 1976
18	budget.
19	MR. KLUGMAN: 218?
20	MR. KRISTAL: Yes.
21	MR. KLUGMAN: I don't have that

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1	grants and contracts line, not the salaries of
2	the different people and your expenses.
3	A. \$4,950,000.
4	Q. If you look at the proposed 1976 budget
5	for contracts and contracts, what is that line?
6	A. \$5,910,000.
7	Q. Now, I averaged those two out, and the
8	average between 1975 and '76 was \$5.43 million.
9	Does that sound about right?
10	A. I'll accept your word for it.
11	MR. KLUGMAN: Wait a minute. The
12	average between.
13	Q. The average between 4.95 million and
14	5.91 million is 5.3 million. Are you with me on
15	that?
16	A. Yes.
17	MR. KRISTAL: Now, let me mark as
18	exhibit, what was the last number that you had?
19	MR. KLUGMAN: I think it was 55.
20	MR. KRISTAL: 55. Let me mark as 56.

This is a letter from Mr. Pepples to Mr. Bowling

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1	and Mr. Spears dated October 7, 1983.
2	(Whereupon, Zahn Deposition
3	Exhibit No. 56, letter dated October 7, 1983,
4	from Pepples to Bowling and Spears, marked.)
5	MR. KLUGMAN: Why don't you check that
6	first. Let's take a minute. Is it one you dealt
7	with?
8	MR. BELLACOSA: Yeah, I think it is
9	okay.
10	Q. Okay. And Mr. Pepples was an attorney
11	for Brown & Williamson, correct?
12	A. Yes.
13	Q. He is listed up top on the heading of
14	the sheet, of the letterhead as senior
15	vice-president and general counsel?
16	A. Yes.
17	Q. And he writes to Mr. Bowling at Philip
18	Morris and Mr. Spears at Lorillard: Enclosing a
19	paper proposing recommendations which we might
20	make to the Executive Committee.
	11

Do you see that?

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1	Q. Do you have an idea as to what funding
2	was at that point in time?
3	A. No. I don't recall.
4	Q. Do you know whether or not the tobacco
5	industry funding of CTR for research was keeping
6	pace with inflation at the time?
7	A. I don't remember.
8	Q. If you turn to the fourth page of the
9	document, the one that ends in Bates number 064,
10	you see that?
11	A. Yes.
12	Q. Okay. It says Council for Tobacco
13	Research USA, and then it has three years, 1980,
14	1981, 1982, and then it has dollar amounts for
15	the grants programs. Do you see that?
16	A. Yes.
17	Q. And for 1980, it wis \$5,517,586,
18	correct?
19	A. Yes.
20	Q. And for 1981, it was \$5,694,588,
21	correct?
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1	A. Yes.
2	Q. And for 1982, it was \$6,765,663,
3	correct?
4	A. Yes.
5	Q. And the total they have here for the
6	three years is just under \$18 million, right?
7	A. Yes.
8	Q. And if you average the exact amount
9	over the three years it comes out to 5.99 million
10	per year; do you see that?
11	A. Yes.
12	MR. KLUGMAN: Well, I don't see that in
13	the document. That's your math, okay?
14	Q. Just under 18 divided by three.
15	MR. KLUGMAN: He asked did he say it.
16	He said yes. That's fine.
17	A. I'll assume your mathematics are
18	correct.
19	Q. Now, let me show you the report of the
20	Council for Tobacco Research, 1993, which was
21	marked as Zahn 37, which Mr. Klugman had referred

to earlier this morning, when you were testifying.

Do you see that?

A. Yes.

- Q. Turn to the introduction page, if you would. The total amount of money spent on research by the tobacco industry through the Council for Tobacco Research was \$223 million, correct?
- A. Yes.
- Q. And that is from the beginning of 1954 through the end of 1993, correct?
- A. Well, I don't think it started that early, but for --
  - Q. When did it start?
- A. I would guess, there were no grants in 1954, that I am aware of, although I was not at Hill & Knowlton then. I didn't go there until 1955.
  - And the first one, two or three, whatever, a very small number, probably began in

1	1955. Maybe even the beginning, but very early
2	on.
3	Q. Go ahead.
4	A. And few in number at the beginning.
5	Q. From 1954 to 1993 was 40 years,
6	correct?
7	A. Yes.
8	Q. What is the average per year spent by
9	the tobacco industry on CTR research programs?
10	A. I have no idea.
11	Q. If you divided \$223 million by 40.
12	MR. KLUGMAN: He just told you why that
13	would be even appropriate, but go ahead.
14	MR. KRISTAL: I appreciate no comments.
15	If you have an objection, just make an
16	objection.
17	_ MR. KLUGMAN: No, Mr. Kristal. I don't
18	believe that I am limited to just objecting.
19	MR. KRISTAL: That's an interesting
20	concept.
21	MR. KLUGMAN: That's the way it works

in New York, sir.	If you are mislea	ding the
witness, I have a	right and perhaps	an obligation
to make that clear	r on the record.	

- Q. \$223 million divided 40 years, 5.575 million average?
- A. If that's what your figures are.

  MR. KLUGMAN: Objection to the form.

  Excuse me. I'm sorry.
- Q. Now, 5.57 million average spent by the tobacco industry on CTR research, you would agree is a very, very small amount of money in the tobacco world?
  - MR. BELLACOSA: Objection to the form.
  - MR. KLUGMAN: Objection to the form.
- A. I don't know what you mean by I would agree to it.
  - Q. Do you agree?

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- A. I mean a million dollars to me is a lot of money.
- Q. In the tobacco industry, I think you said that the research money invested was a

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1	substantial amount. Right?
2	Do you think that 5.575 million a
3	average a year is a substantial amount?
4	MR. KLUGMAN: Objection to the form. I
5	wish Mark Twain were here, but go ahead.
6	A. Yes. I do. If I remember correctly,
7	the Council's research program is one of the best
8	in the country among granting agencies.
9	Q. If you look at exhibit
٥.	A that are not publicly funded.
.1	Q. If you look at Exhibit 29, which was
. 2	the 1962 memo from Dr. Brady.
١3	A. I do have that? Yeah. Here it is.
4	Q. Look under the first recommendation,
L 5	where he was recommending in 1962 that the budget
L 6	for research be increased to \$5 million.
17	What does he say? Could you read that
18	for the jury?
19	A. To increase the TIRC budget to \$5
2 0	million per annum.
21	Q. Right. What does he say underneath

1 | that for the rationale?

7.

- A. Rationale, this would be a more realistic figure in itself. The public's knowledge of advertising costs while selling tobacco products does leave John Q. Public with the feeling he is being "suckered" a little. A more substantial allocation of hard money would improve the industry's "image".
- Q. Do you have any idea -- strike that.

  Did you ever ask anybody while you were working for CTR through 1994, how much money any one company was spending on advertising cigarettes?

MR. KLUGMAN: Objection to the form.

- ${\tt A}$ . I don't recall ever having a reason for doing that.
- Q. Do you know how much money any one company has spent in any one year on any one brand advertising cigarettes?
  - A. No. But I'm assuming it is a lot.

    MR. KRISTAL: Let me mark as Zahn 56.

    (Whereupon, Zahn Deposition

Exhibit No. 57, Camel marketing plan for 1992, marked.)

MR. BELLACOSA: 57.

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- Q. 57. Thank you. This is a Camel marketing plan for 1992, and this was produced by R.J. Reynolds Tobacco Company. Turn to the next to the last page, Bates number 5588.
  - A. I don't see -- oh, 5588. Okay.
- Q. Now, this page is entitled Camel 1992 Marketing Plan. Do you see that?
  - A. This is, oh, yes, yeah.
- Q. And it has a column listing various aspects, media, print, promotion, coupons, direct marketing, field marketing, sampling. Do you see that? Yes?
  - A. I'm sorry, yes.
- Q. And the total amount noted on this document for 1992, for R.J. Reynolds marketing one of their brands, Camel, is \$204.5 million dollars.
  - A. Yes.

1	MR. KLUGMAN: Hold on. I don't see
2	that. If you guys do, that's more important.
3	MR. KRISTAL: Bottom right.
4	MR. KLUGMAN: I think I'm on the last
5	page. This is the next to the last page of the
6	document. Okay. I was on the wrong page.
7	Q. Correct?
8	A. Yes.
9	Q. So in 1992, R.J. Reynolds in marketing
10	Camel spent almost as much as CTR spent on all of
11	its research from 1954 to 1994, correct?
12	MR. KLUGMAN: Objection to the form.
13	That's not what this document says.
14	A. I'm sorry?
15	Q. Is that right? CTR spent on research,
16	the tobacco industry spent on CTR research,
17	between 1954 and the end of 1993, how much
18	money?
19	A. What does the annual report say, \$223
20	million?
21	MR. KLUGMAN: It is right there.
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1	Q. Right. \$223 million?
2	A. And this is 204 million.
3	Q. Okay. Now, let me mark as Exhibit 58 a
4	portion of a transcript of an R.J. Reynolds
5	Tobacco executive vice-president
6	A. Mr. Kristal, excuse me. Could we go
7.	off the record for a moment?
8	MR. KRISTAL: Sure.
9	VIDEO OPERATOR: Off the record, the
10	time is 12:18.
11	(Break.)
12	VIDEO OPERATOR: Back on the record.
13	The time is 12:23.
14	(Whereupon, Zahn Deposition
15	Exhibit No. 58, transcript dated May 29, 1997,
16	marked.)
17	Q. I had marked as Exhibit 58 testimony in
18	the case of Janet Mangini, M-a-n-g-i-n-i, which
19	is R.J. Reynolds Tobacco Company, et al., from
20	May 29, 1997.
21	I asked you to read some pages while we
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were off the record and you were kind enough to do that.

Ms. Beasley testified, did she not, that her estimate of the Joe Camel advertising campaign for Camel cigarettes for media placement between 1987 through the present, which at that time was 1997, was between 30 million and 60 million dollars a year, did she not?

MR. KLUGMAN: Object to the form.

. MR. BELLACOSA: Object to the form.

- A. I didn't dwell on specific figures, but if that's what she said, it is in here. I just got a general sense of what these pages were, the ones, the pages you asked me to read.
- Q. Okay. Why don't you look on page 140.

  MR. KLUGMAN: Have you got a copy for

  us, so we can see if you got it right.

MR. KRISTAL: No.

- A. I'm looking at 140, yes.
- Q. Line 14.
- A. Yes.

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Q. Ms. Beasley asks: But over the time period you are looking at, 1987 through the present, that is sort of what you are looking for, correct?

And then the questioner said: Right. Broken down year by year.

And she said: I can't do that. We can go back and look that up. I have, I do not memorize that year by year.

And then the questioner said: All right. And I understand you don't know the dollar figure, but my next question is: Give methe range, where you think that dollar figure falls.

Ms. Beasley's answer was: I think the range where the dollar figure would fall for any particular year would be on all media placement, not just bill boards, but including magazines and newspapers, all media placement would be probably between 30 and maybe at the outside 60 million.

Do you see that?

A. Yes
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Q. And what they are referring to, turn back to page 139, is the Joe Camel campaign, correct?

MR. KLUGMAN: Objection to the form.

- A. Apparently so, yes.
- Q. That 30 to \$60 million range for media placement by R.J. Reynolds in his Joe Camel campaign for its Camel brand of cigarettes of 30 to 60 million dollars a year is repeated several times in the pages I asked you to read, correct?

MR. BELLACOSA: Object to the form.

MR. KLUGMAN: Objection to the form.

- Q. Page 142, line 16, the range I gave you which is in, I believe, on total media, that it would in any one year, it would be anywhere between 30 to perhaps at the outside 60 million?
  - A. Yes.

MR. BELLACOSA: Objection.

Q. And then on page 143, line 15, she testifies:

"Again, what I have said is on media cost, billboard, magazines, newspapers, on media placement, the range is about 30 to 60."

Do you see that?

A. Yes.

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MR. BELLACOSA: Objection to form.

Q. What RJR spent on one brand for one advertising campaign for a ten-year period was more by tens of millions of dollars, if not hundreds of millions of dollars, than what the entire tobacco industry spent on CTR research from 1954 through 1994, correct?

MR. KLUGMAN: Objection to the form.

MR. BELLACOSA: Object to the form.

A. Yes.

Q. Did you -- it is in the transcript, maybe I -- well, le\_ me ask you this. Strike that.

Did you publish something in the Journal of the American Medical Association at some point in your career?

1	A. You mean an article that I wrote?
2	Q. Yes.
3	A. Yes.
4	Q. Now, you have never done medical
5	research, correct?
6	A. That's right.
7	Q. You have never done scientific
8	research?
9	A. That's right.
10	Q. Did the article that was published in
11	the Journal of the American Medical Association
12	have anything to do with medical or scientific
13	research?
14	A. Yes.
15	Q. What is the title of the article?
16	A. I don't remember.
17	Q. What year did you publish this
18	article?
19	A. Oh, it was a number of years ago.
20	Q. What was the subject of the article?
21	A. A surgical procedure to repair noses
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1	destroyed by noses destroyed by cancer.
2	Q. I'm sorry. Go ahead.
3	A. In which, I believe, he was a dentist
4	or a dental surgeon or an oral surgeon, I'm not
5	quite sure, as far as my memory is concerned,
6	devised a way of making a flap and using a how
7	shall I say a nonreactable substance, gold,
8	gold rings of some kind, that were almost
9	invisible, to create a nose for people who
10	suffered from destructive nose cancer.
11	Q. And you wrote this article?
12	A. Yes. I did.
13	Q. Was it an article related to the
14	research that had been done?
15	A. Yes.
16	Q. Who did the research?
17	A. This physician or scientist.
18	Q. Was this article peer reviewed?
19	A. Mr. Kristal, may I take a moment to
20	explain something to you?
21	Q. No. I'm asking you what if the article

1 was peer reviewed or not.

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MR. KLUGMAN: If you need to explain to answer the question, yes. If you don't need to explain, don't.

A. This appeared in what is known as the Medical News Section of the Journal of the American Medical Association.

JAMA, as it is called often, has a separate news staff. They have people who cover meetings, medical/scientific meetings, and write articles on reports given at those meetings. So that --

- Q. So when you said --
- A. -- that is not peer review. The scientific articles in the scientific section of the Journal are peer review.
- Q. So when you said you had published an article in the Journal of the American Medical Association, what you meant was a newspaper article, right?

MR. KLUGMAN: Objection to the form.

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- A. It was not a newspaper article. It was an article that had my by line on it that appeared in the news section.
  - Q. And it was a news item, right?
  - A. Yes.

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- Q. And the Journal of Geriatrics, you said you published an article in that?
  - A. Yes.
  - Q. Same type of article, a news article?
  - A. Yes. It was.
- Q. So you never had --
  - A. That's true. None of the articles I wrote was on research that I did, because I never did any. These are all reportorial pieces similar in content to what you read in the daily newspaper or the news magazines.
    - Q. None of them were peer reviewed?
  - A. Only by the editor who published the material.
  - Q. You know what the peer review process is?

1	A. Oh, I do.
2	Q. Where you submit an article by people
3	who are recognized authorities in a field and
4	they criticize the article?
5	MR. KLUGMAN: Objection.
6	MR KRISTAL: Correct?
7	A. Yes.
8	MR. KLUGMAN: Objection.
9	Q. None of these articles, these news
10	articles you had went through that process,
11	correct?
12	A. Never do. Never do go through that
13	process.
14	Q. Now, is there anything in Exhibit 40,
15	the grant policy document here it is, it is my
16	copy statement of policy containing conditions
17	and terms under which project grants were made.
18	Does anything in there refer to editing
19	of research papers, rewriting of research papers
20	by CTR staff members?
21	A. As I say, I haven't read this in
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1	decades. I don't remember any such references.
2	Q. Was there a policy to ever edit or
3	rewrite research papers?
4	MR. KLUGMAN: Objection the to form.
5	Q. By CTR staff members?
6	MR. KLUGMAN: Objection to form.
7.	A. Not of which I am aware of.
8	Q. You recall Dr. Eichel, E-i-c-h-e-l, do
9	you recall Dr. Eichel?
. 0	A. I'm trying to remember was he from
. 1	Upstate New York? I'm not quite sure. The name
. 2	is and is not familiar.
. 3	MR. KRISTAL: Okay. Then let me mark
4	and not mark this next exhibit as Exhibit 59.
1 5	MR. KLUGMAN: Are you giving him the
6	option?
17	(Whereupon, Zahn Deposition
1 8	Exhibit No. 59, letter dated July 30, 1969 from
19	Zahn to Hockett, marked.)
2 0	Q. This is a letter from you dated July
21	30, 1969, to Robert C. Hockett, Associate
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	Scientific Director for the Council for Tobacco
	Research, do you see that?
	A. Yes.
ĺ	Q. Copies of this went to Mr. Ramm and

- Q. Copies of this went to Mr. Ramm and Mr. Hoyt, right, cc. at the end?
  - A. Yes.

Q. You write in the first sentence:
"After reading the Eichel paper more closely, I
am more concerned than before."

Does this help you recall that at some point in time, you were familiar with a paper by a Dr. Eichel?

- A. No. This is 30 years ago. My gosh.

  No. I don't remember anything about it.
- MR. KLUGMAN: Just try to answer the questions.
  - Q. Do you have, reading this document, do you have any recollection of editing a paper by a Dr. Eichel?
    - MR. KLUGMAN: Objection to the form.
  - A. No. I do not.

.	Q. At the time that you wrote this
:	document, were you accurately reporting to
٠	Mr. Hockett whatever your beliefs and opinions
١.	were at that time?
5	MR. KLUGMAN: Objection to form.
5	A. I always tried to be that.
7	Q. And is there any reason why this would
3	be an exception?

- A. I can't recall that there would be any reason for an exception.
- Q. And at the time that you wrote this to Dr. Hockett, is it fair to say that at or around that time you were involved with reading and editing a paper by Eichel?

MR. KLUGMAN: Objection to the form. Compound among other things.

- Q. Well, were you involved in reading a paper by Eichel at that time?
  - A. Well, apparently I was, yeah.
- Q. And were you involved in editing a paper by Eichel at that time?

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MR. KLUGMAN: Objection to the form.

I look at the term editing I think a little differently than, perhaps, you do.

Maybe I did edit it, I don't remember. Or maybe I was asked for my thoughts on the paper.

- And at that time, were you recording your thoughts on that subject, based on this letter?
- I'm sorry, did you say recording or reporting?
- Recording, writing down what your thoughts were at that time?
- Oh, absolutely. Apparently that's what I did, no doubt about it.
- You wrote here, after the sentence I read: "I feel some of the wording is almost sensational and goes far beyond the findings he reports. Further, some of the claims and implications are pure speculation and totally unsupported by his experimental work."

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1	Do you see that?
2	A. Yes.
3	Q. Were you ever asked to comment on
4	papers, other than your apparent comment on
5	Dr. Eichel's paper here?
6	MR. KLUGMAN: Objection to form. You
7	mean in this context?
8	MR. KRISTAL: Yes.
9	MR. KLUGMAN: By people at CTR?
. 0	. MR. KRISTAL: Yes.
. 1	A. I don't remember, but I may well have
. 2	been.
. 3	Q. The third paragraph reads: "Also, his
4	extrapolation of the findings to presume for
. 5	possible carcinogenic effects on the trachea and
۱6	lung is further highly speculative and
٦,	unjustified. I suppose it may be "cientific
8	license for him to do so, but I think it
19	inaccurate and uncalled for."
	Do you goe that?

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1	Q.	Did you have any expertise on
2	carcinogen	ic effects on the trachea and lung?
3		MR. KLUGMAN: Objection to the form
4	A.	As having done research in those?
5	Q.	Any expertise.
6	Α.	Only reportorial experience.

- Q. Meaning you read stuff about it?

  MR. KLUGMAN: Objection to the form.
- Q. What do you mean by reportorial experience?
- A. Reporting on medical reports and papers and sessions I had attended, and just from having gone through meetings through the years.
- Q... The next paragraph reads: "I am attaching a sheet with some suggested changes that might help put the article in proper perspective.

Meanwhile, here are some general observations. And then you list six different observations, correct?

A. Yes.

- Q. And then attached to this you wrote re Eichel paper, and then you make some suggestions regarding different paragraphs in the paper, do you not?
  - A. Yes.

- Q. Do you recall reading this now, whether Dr. Hockett asked you to do this?
- A. I would assume, that he did, because I addressed my memo or my letter to him. But I am just assuming.

I obviously wrote it, because it is on my letterhead, although I notice it was a personal letterhead, and this is, I suppose, because I had just gone into business for myself and did not yet have my company letterhead from the printer.

Q. Right. out on the --

MR. KLUGMAN: Mr. Zahn, we've had this discussion before, as you just recognized, recognized earlier in the deposition, you ought not to be assuming things.

Mr. Kristal asked you if you remembered this based on your review of the document.

Please try to answer his questions.

A. I don't remember what prompted me to write this, I can't remember that.

Q. Did your duties as the principal of Leonard Zahn & Associates, for CTR or TIRC at any point in time, including reviewing scientific papers?

MR. KLUGMAN: Objection to the form.

- Q. That were being submitted to CTR?

  MR. KLUGMAN: Objection to form.
- A. I saw very, very -- I can't remember being asked to do this. I don't want to use the word "assume."

It may well have been that some were given to me for my comments. I just don't remember.

Now, you are referring to CTR grantees.

Q. Yes.

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A. Or contract holders.

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1	Q. Yes. Same answer?
2	A. Yes
3	Q. Let me give you a copy of 29 again,
4	Exhibit 29, Dr. Brady.
5	A. Oh, yes.
6	MR. KLUGMAN: Hold on one second.
7	Q. Now, Dr. Brady was an Associate
8	Scientist with TIRC and then CTR?
9	A. Associate Scientific Director.
10	Q. Qualified to know about the outfit he
11	was working for, TIRC at the time in '62?
12	MR. KLUGMAN: Objection to the form,
13	vague and ambiguous.
14	A. I suppose so. I mean he was an
15	employee, and he was a medical doctor. I don't
16	know what other qualifications you need to know
17	what your employer does.
18	Q. Was he the next in line after
19	Dr. Little in terms of scientific personnel at
20	that time?
21	MR. KLUGMAN: Objection to form.

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1	A. I don't believe so.
2	Q. How many Associate Scientific Directors
3	were there?
4	A. At that time, I can't recall. There
5	were a couple at least.
6	Q. And Dr. Little was the Scientific
7	Director at that time?
8	A. I believe so, yes.
9	Q. Dr. Brady writes, his fourth paragraph
10	here: "To date, the TIRC program has carried its
11	fair share of the public relations load in

Do you see that?

whole approach requires both revision and

Yes. A.

expansion."

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Do you disagree with that? MR. KLUGMAN: Objection to the form.

providing materials to stamp out the brush fires

as they arose. While effective in the past, this

I have no idea what he is talking about frankly.

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- Q. So you don't agree or disagree?
  MR. KLUGMAN: Objection to the form.
- A. As I say, I just don't know what he is talking about.
- Q. Do you believe that the TIRC program as of 1962 had provided materials to stamp out the brush fires as they arose?

MR. BELLACOSA: Objection to the form.

MR. KLUGMAN: Objection to form.

- A. As I say, I don't know to what he is referring.
- Q. Okay. Let's refer, then maybe it will help. Maybe that will help.

by Hammond, et al., was like the early symptoms of diabetes. Certain dietary controls kept public opinion reasonably healthy. When some new symptom appeared, a shot of insulin, in the way of a news release, a Burkson antidote, a Rosenblatt television rebuttal, et cetera, kept the patient going."

1	Do you have an idea now as to what he
2	is talking about?
3	MR. KLUGMAN: Objection to form.
4	A. Well, the names Burkson and Rosenblatt
5	are familiar to me.
6	Q. And they were people who were TIRC
7	staff members?
8	A. No.
9	Q. They were scientists?
10	A. Yes.
11	Q. And they gave statements on behalf of
12	TIRC at that time?
13	MR. KLUGMAN: Objection to the form.
14	MR. BELLACOSA: Objection to the form.
15	Q. Did they give statements at that time
16	on behalf of TIRC?
17	A. I don't believe so.
18	Q. So when Dr. Brady writes a Burkson
19	antidote, a Rosenblatt television rebuttal, do
20	you have any idea what he is talking about?
21	A. I think so, yes.

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1	lj
2	context that he is writing this in?
3	MR. KLUGMAN: Objection to the form.
3 4 5	MR. BELLACOSA: Object to the form.
5	A. His statement is, the first statement

- A. His statement is, the first statement of the sentence that leads off this paragraph is very misleading. Burkson was Dr. Joseph Burkson of the Mayo Clinic.
- Q. And my question to you is: Does reading this help you understand what Dr. Brady is talking about?

MR. KLUGMÁN: Objection to the form.

 $\mbox{MR. BELLACOSA:}$  Objection to the form.

- A. But he is wrong in his --
- Q. I'm not asking whether his interpretation is right or wrong or you agree or disagree. That's not on the table. The question is: Does it help you understand what he is talking about?
  - A. Not really.

Q. Okay. He continues: Again,

characteristic of the same disease with age, the problem becomes more complex and response to treatment is slower and treatment far more complex. Troublesome symptoms are appearing in the almost constant reference to cigarette smoking or the use of tobacco in some form, and practically every article written about chest disease (all forms of lung disease as well as cardiovascular disease) tumor formation of the upper respiratory tract, gastrointestinal disorders, e.g., ulcer, et cetera. Tobacco usage is being negatively reported in patients' histories."

Do you see that?

A. Yes.

Q. Does that help you understand what he is talking about?

MR. BELLACOSA: Objection to the form.

MR. KLUGMAN: Jerry, I have an objection. Do you mean does that help him understand what you just read or the stuff at the

1	beginning that he didn't understand?
2	MR. KRISTAL: I read the first two
3	sentences of that paragraph, regarding TIRC
4	carrying its fair share of the public relations
5	load, providing materials to stomp out brush
6	fires, and my understanding of his answer was
7	that he doesn't understand what that meant.
8	MR. KLUGMAN: I'm trying to clarify.
9	You are asking whether this stuff helps him
10	understand the material at beginning of the
11	paragraph?
12	MR. KRISTAL: Yes.
13	MR. KLUGMAN: I don't think that was
14	clear. It wasn't clear to me. Now, it is. At
15	least it is clear that that's the question.
16	MR. BELLACOSA: I still object to the
17	form.
18	MR. KLUGMAN: I object to the form.
19	Q. Does that help you understand the
20	context of what he is talking about?
21	A. Yeah, I think it does, but I have to
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add to that. The first sentence that he has written here is quite misleading.

The second sentence is, well, he is trying to give his views, we've got to start doing somethings.

At any rate, he is and was totally wrong in his interpretation of the way he expresses it here.

Q. So when Dr. Brady, Associate Scientific Director of TIRC in 1962, wrote this memo to Dr. Little, Scientific Director of TIRC in 1962, and said that the TIRC program has "carried its fair share of the public relations load, providing materials to stamp out the brush fires as they arose", it is your belief that that was misleading?

MR. KLUGMAN: Objection.

A. Your -- it is misleading in the sense that he is trying to say TIRC was using what follows in this paragraph. And he is just absolutely wrong with it.

1	He is implying that Burkson and
2	Rosenblatt were saying things for TIRC. And he
3	is totally wrong.
4	MR. KLUGMAN: Even managed to mislead
5	Mr. Kristal, and that's hard to do.
6	MR. KRISTAL: Pardon me?
7	MR. KLUGMAN: Even managed to mislead
8	you.
9	Q. Are you saying that your recollection
10	of TIRC's connection to Burkson and Rosenblatt in
11	1998 is better than Dr. Brady's in 1962?
12	MR. KLUGMAN: Objection to form.
13	MR. KRISTAL: I'm sorry, it is 1999.
14	MR. KLUGMAN: Still object.
15	A. Maybe I can't remember as well now as I
16	would have at that period in time 37 years ago.
17	But I do know that Burkson and
18	Rosenblatt, they may have, well, I'm not sure. I
19	do know that Tom Hoyt did know them, but these
20	physicians said things publicly concerning
21	smoking that were not paid for by TIRC, were not
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1 sponsored by TIRC.

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They were saying what a number of scientists and doctors were saying in these early years, when this problem was beginning to, the smoking and health controversy was beginning to grow.

But for him to imply that this was part of TIRC's public relations program is, as I say, very misleading.

MR. KRISTAL: Move to strike the nonresponsive portions of that answer.

Q. Do you have any knowledge whether or not Dr. Burkson or Dr. Rosenblatt ever had any arrangement with TIRC at any point in time?

MR. KLUGMAN: Objection to the form.

A. No. I do not.

MR. KRISTAL: Let me show you what I'll mark as Exhibit 60.

(Whereupon, Zahn Deposition Exhibit No. 60, notes of meeting, marked.)

Q. It is a memo of a writing, title is

R.J. Reynolds Tobacco Company, re CTR document production. Give you a copy. Counsel a copy.

MR. KLUGMAN: Yeah, this is a privileged document. You can look at it.

MR. BELLACOSA: Yes, defendants, in particular, defendant R.J. Reynolds Tobacco, assert that Zahn Exhibit 60 is a privileged document, based on the attorney-client privilege, opinion work product doctrine and joint defense of common interest privileges.

Therefore, I object to its use. I understand the parameters of Judge Gwin's order of December 16, 1998.

- Q. Now, the document references a meeting, August 8, 1985 at Webster & Sheffield, wherein two issues were discussed, one an industry R&D time line. You see where I am reading?
  - A. Yes.

- Q. The second is CTR document production. Do you see that?
  - A. Yes.

1	Q. The bottom of the first page, it is
2	noted at the meeting that Janet Brown was asked
3	to outline the history of CTR. Do you see that?
4	A. Yes.
5	Q. Now, Janet Brown was an attorney at the
6	law firm of Chadborne & Park?
7	A. Yes.
8	Q. And she was familiar with CTR,
9	correct?
10	MR. BELLACOSA: Objection to form.
11	MR. KLUGMAN: Objection to form.
12	A. Well, how can I answer that? I mean
13	she represented, her law firm represented the
14	Council at that time, I believe.
15	Q. Now, on page three of this document,
16	Roman numeral two is the history of TIRC/CTR. Do
17	you see that?
18	A. Yes.
19	MR. KLUGMAN: Could I hear that
20	question back?
21	MR. KRISTAL: Asked if he saw the
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1	heading on page three, history are TIRC/CTR.
2	Q. Under A, CTR organization, number one
3	is the current structure. Do you see that?
4	A. Yes.
5	Q. And it has a diagram, do you see this?
6	A. Yes.
7.	Q. And under CTR, in a box, it has the
8	chairman in a box, right?
9	A. Yes.
10	Q. Then the president, correct?
11	A. Yes.
12	Q. Then the Scientific Director?
13	A. Yes.
14	Q. And then on the diagram as you are
15	facing it, to your left it has a separate box
16	going from the Scientific Director to Special
17	Projects, do you see that?
18	A. Yes.
19	Q. Up top in the diagram opposite CTR is a
20	box with the SAB?
21	A. Yes.

Q.	Scientific	Advisory	Board;	is	that
correct?					

A. Yes.

Q. Do you agree that this was an accurate representation of the structure of the CTR as of 1985?

MR. KLUGMAN: I object to the form. I also think it is beyond the scope of the cross-examination. Does this have anything to do with the cross-examination, Mr. Kristal?

MR. KRISTAL: Sure. I think there was all sorts of testimony about independence of CTR and stuff.

MR. KLUGMAN: I don't think he was asked. I could have asked him about the organizational structure, but go ahead. I don't want to cut you off. I do think it is beyond the scope of direct. I also object to the form. It is an entirely unfair question. I have no idea what this thing is supposed to mean. Maybe he does.

1	MR. KRISTAL: Again, I'm objecting to
2	your making comments such as those, which I
3	believe are coaching Mr. Zahn. Simply state an
4	objection, I have no problem with that.
5	Q. Does this diagram, to your knowledge,
6	accurately reflect the structure of CTR at that
7	time?
8	MR. KLUGMAN: Objection to the form.
9	MR. BELLACOSA: Object to the form.
10	MR. KLUGMAN: It is my principal
11	objection is that it is not only compound, but I
12	can't even count the number of parts of the
13	question, because I can't count the number of
14	things represented on this diagram, probably
15	somewhere between 20 and 50.
16	MR. KRISTAL: What's your objection,
17	compound question?
18	MR. KLUGMAN: Yes.
19	MR. KRISTAL: Why don't you say compound
20	question?
21	MR. KLUGMAN: Because it is more than
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compound.

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MR. KRISTAL: What other objection do you have.

MR. KLUGMAN: Compound implies to me there are two parts. This has multi, multi parts to it.

MR. KRISTAL: Then say multi-compound, but you don't need to make a speech about what you think the problem is with the question.

MR. KLUGMAN: Please don't tell me what I need to do.

MR. KRISTAL: Please don't make speeches. It violates the rules we are operating under, and if you continue to do that, I will call Magistrate Judge Thomas.

MR. KLUGMAN: You call Magistrate Judge Thomas and tell him you are taking the deposition of a nonparty and you don't like the way it's going.

THE WITNESS: Should I respond?

MR. KLUGMAN: You should tell him it is

in New York though.

THE WITNESS: Should I respond to the question?

MR. KLUGMAN: Yes.

A. I have never seen this thing, the table of organization. When I look at something like this, I am familiar with, when I was in the military service, there was I was an officer in charge of units, and things flowed from one thing to another to another.

I'm not familiar with the Scientific Director. I don't know if this line means being responsible for or being in charge, whatever, I'm not familiar with that.

What I remember, the chairman and the president were combined in the same office, the same person.

So, you know, I can't agree or disagree. This is the way it was, I assume this was the way it was. May still be.

Q. And you had no knowledge at that time

1 about Special Projects and where it may fit into an organizational structure, is that correct? 2 MR. BELLACOSA: Objection to the form. 3 MR. KLUGMAN: Objection to form. I can't remember when I first heard 5 about them, so I really can't answer that. 6 MR. KLUGMAN: Mr. Zahn, again, I'll 7 tell you as I did before. Mr. Kristal is asking 8 you what know and don't know and remember and 9 don't remember. Please don't tell him what you 10 11 assume. Okay. 12 Α. 13 Do you know anything as to CTR Special Projects? 14 Only that they existed. 15 Do you know anything as to where CTR 16 Special Projects fell in the organizational 17 structure of CTR? 18

A. No.

No foundation, no premise.

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MR. KLUGMAN: Objection to the form.

1	Q.	Have you ever asked anybody?
2	Α.	Yes.
3	٥.	Mr. Hoyt?
4	Α.	Yes.
5	Q.	And that's when he told you it is none
6	of your bu	siness, in essence.
7		MR. BELLACOSA: Objection to the form.
8		MR. KLUGMAN: Objection to the form.
9	Q.	Is that what he told you?
10	λ.	Yes.
11	Q.	If you look at the next page under CTR
12	independen	ice, number two, do you see that?
13	<b>A</b> .	Yes.
14	<b>Q</b> .	It reads: *Brown was adamant that CTR
15	is the ind	dustry itself and is not independent,
16	rather the	SAB is independent."
17		Do you see that?
18	Α.	Yes.
19	Q.	Do you disagree or agree with the first
20	sentence t	hat I just read from there?
21		MR. KLUGMAN: Objection to the form.
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1	A. I disagree.
2	Q. So in your opinion, CTR was
3	independent?
4	MR. KLUGMAN: Objection to the form.
5	Q. Of the industry?
6	MR. BELLACOSA: Objection to the form.
7	MR. KLUGMAN: Objection to form.
8	MR. KRISTAL: Strike the question.
9	A. In terms of
10	. MR. BELLACOSA: There is no question.
11	MR. KRISTAL: There is no question.
12	MR. KLUGMAN: Forgot to tell him what
13	that means.
14	THE WITNESS: Okay. I should be
15	becoming legally oriented after all this time, I
16	guess.
17	Q. Do you know strike that
18	Can you ever discuss, hear discussed,
19	ask, inquire, have any conversation with Janet
20	Brown, about the independence of CTR?
21	MR. KLUGMAN: You can answer that yes
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or no.

1 2

A. No.

Q. Did you have any discussion, other than perhaps current lawyers, carve that out in terms of the pending litigation, with anybody at CTR, regarding the independence of CTR?

MR. BELLACOSA: Object to form.

MR. KLUGMAN: Object to the form. Why don't you go ahead and answer it yes or no. If it involves anybody but lawyers, keep going. If it involves anybody with lawyers, stop and we'll sort it out. Excuse me. If it involves discussions with lawyers, stop and we'll see if it privileged?

- A. I generally recall from the beginning with Hoyt and Hockett and Little and the others about the fact that CTR had to maintain its independence in terms of the research program. I mean without that independence there is no CTR.
- Q. Did anybody ever express to you at any point when you worked for CTR or worked in a

	II
1	consulting capacity
2	A. Yes.
3	Q that they believed CTR was not
4	independent of the tobacco industry?
5	MR. BELLACOSA: Objection to the form.
6	MR. KLUGMAN: Objection to form.
7	A. You mean anybody in CTR?
8	Q. Yes.
9	A. No. I don't recall that.
10	Q. Did anybody in the tobacco industry
11	ever state that to you?
12	MR. BELLACOSA: Object to the form.
13	MR. KLUGMAN: Object to the form. Same
14	thing.
15	Q. Let me rephrase the question.
16	Did any nonlawyer ever state to you at
17	any time that you corsulted with CTR that they
18	felt CTR was not independent of the tobacco
19	industry?
20	MR. BELLACOSA: Object to form.
21	MR. KLUGMAN: Objection to form. Go
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1	ahead.
2	A. No. I can't recall.
3	Q. Now, on page eight, this memo of the
4	meeting discussing the there is a section
5	entitled "the role of Hill & Knowlton: The
6	origins of TI.
7.	Do you see that?
8	MR. BELLACOSA: We're missing page
9	eight.
10	Q. Do you have page eight?
11	MR. KLUGMAN: No.
12	MR. BELLACOSA: Referring to the upper
13	right-hand corner?
14	MR. KLUGMAN: You have the same problem
15	I have.
16	THE WITNESS: I don't have an eight, I
17	have a page sight.
18	Q. There is no secret, it might have been
19	miscopied. Here is my page eight.
20	This page eight has a section entitled
21	the role of Hill & Knowlton. Do you see that?

1	A. Yes.
2	Q. Could you read the highlighted sentence
3	that I highlighted there?
4	A. Mr. Hoyt, Simon O'Shea and Ed Hart, for
5	example, were H&K employees for many years,
6	before actually joining the TIRC staff.
7	Q. Was that your understanding?
8	MR. BELLACOSA: Object to the form.
9	MR. KLUGMAN: I object.
10	A. Looking at the date of this.
11	Q. Referencing the 1985.
12	MR. KLUGMAN: This is a discussion of
13	1985?
14	A. I did not know, I certainly don't
15	recall, I know O'Shea and Ed Hart did work for
16	H&K, but I did not know that they actually joined
17	the TIRC staff.
18	Q. On page nine, which you should have
19	A. You want that back?
20	Q. Yeah, we'll make a copy, we'll make a
21	complete copy.

- II	
1	A. Yes. I'm on page nine now.
2	Q. Did anybody ever tell you why Hill &
3	Knowlton were no longer retained by TIRC or CTR?
4	MR. KLUGMAN: Again, can we start off
5	by carving out lawyers?
6	MR. KRISTAL: Sure.
7	MR. KLUGMAN: I don't know whether that
8	affects the answer.
9	Q. Let me move back. Sometime around 1965,
10	Hill & Knowlton was no longer retained by Council
11	for Tobacco Research, correct, or its
12	predecessor?
13	MR. KLUGMAN: Objection to the form.
14	A. I believe about that time. I'm not
15	sure. It was in the sixties, I know, and in the
16	middle sixties, I guess, yeah.
17	Q. Did any nonlawyer tell you why that
18	occurred?
19	A. I can't remember that ever ever
20	having been told that.
21	Q. On page nine, the first full

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## paragraph:

7.

"Following the publication of the 1964 Surgeon General's Report, disaffection with H&K group. At a meeting attended by Brown, H&K was asked for its advice on a proper response. The account representative recommended that the industry mail a copy of the report to every citizen. According to Brown, the industry executives present were outraged. Later H&K's relationship was terminated."

Do you know who the account representative at Hill & Knowlton was right after the Surgeon General's Report came out?

- MR. KLUGMAN: Objection to the form.
- A. This is totally new to me.
- MR. KLUGMAN: Just try to answer his question.
  - A. No. I don't.
- Q. What is the universe of people that were involved with the Hill & Knowlton account at that point? Strike that.

	What	is th	תני פו	iverse	o £	indiv	ridua	ls	at
Hill & Kn	owlton	n who	were	involv	ed	with	the	CTR	
account r	ight a	fter	the	Surgeon	Ge	neral	. ' <b>s</b>		
Penort?									

A. The three top executives were John Hill of Hill & Knowlton, Bert Goss who either was president or chairman. John Hill may have been chairman emeritus, I'm not sure. And Dick, oh, God, I knew him so well, executive vice-president, just under Bert Goss. I'll think of his name. How could I forget his name?

I was on the account, my immediate boss, the account executive, was Carl Thompson, and there were a few others like me, Assistant Account Executives, whatever our titles were.

I may well have been a vice-president.

I don't remember. I think I was.

Q. Before you formed Leonard Zahn & Associates in 1969, were you a Hill & Knowlton employee up until that point in time?

A. Yes.

1 Q. Did you ever discuss with any Hill & Knowlton employee why CTR had terminated its 2 relationship with Hill & Knowlton? 3 MR. KLUGMAN: Objection to the form. λ. No. You never asked anybody? 7

- I may have, but I just don't remember.
- The document continues. The next Q. section is entitled TIRC/CTR problem areas. Do you see that?
  - Yes.

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It reads: "At this point, the discussion got side tracked to take note of two critical problems with the CTR story, pressure plays to re-orient research and disaffected SAB members. "

Do you see that?

- Yes.
- Were you aware at any point in time that you were with CTR, consulting for CTR, of pressure plays to re-orient research?

- 11	
1	MR. KLUGMAN: Objection to the form.
2	MR. BELLACOSA: Objection to the form.
3	A. No. I can't recall anything that was
4	really important enough that it would have stuck
5	in my mind.
6	Q. The document then continues under a
7	section entitled: "Fundamental versus applied
8	research. This dichotomy resulted in substantial
9	disagreements over the years within CTR and among
10	industry members. Chuck Wall noted, for example,
11	that his clients' documents questioned the
12	relevance of CTR research."
13	Do you see that?
14	A. Yes.
15	Q. Did anybody at any time you consulted
16	with CTR, question the relevance of CTR
17	research?
18	MR. KLUGMAN: Objection to the form.
19	A. Oh, I can recall some conversations
20	with company various company neonle. Hard for

me to recall whom, who they were.

21

You know, why doesn't CTR do this, or why do they do that, so forth, things of that kind.

MR. BELLACOSA: Just so it is clear from the record, the word "relevance" is in separate quotations.

- Q. Now, earlier, when Mr. Klugman, earlier this morning was asking you, you were talking about complaints of no positive research and he asked you to define it. And did you define positive research as studies that did not show smoking caused lung cancer or other diseases?
- A. Well, perhaps I should refine that a little bit. To put it bluntly, smoking is not all that harmful, they would love to see something like that, even though they knew and everyone else knew, that sort of thing is impossible, so I, you know, this is such an amorphous area.

They all really understood the need for CTR to be independent and to let the research

proposals come from the outside and to let the SAB determine what areas might not, might have been overlooked and should be further explored, if they could find the proper people to apply for grants.

A

But it was just, you know, a question of where company people reading every day or week or month in the newspapers or seeing on television studies saying all sorts of bad things about smoking.

Why can't we, their idea was, why can't we do some research, sponsor some research that would sort of change that around, knowing full well that it was not possible.

Q. First of all, I move to strike the nonresponsive portions of that answer. But in case it is not strike even, let me ask this:

Who is the they and the we that you were referring to in that answer? Are you talking about CTR? Are you talking about the tobacco industry in general? You said several

times they, we.

- A. No, the tobacco industry company people in general, who I would see at meetings or whatever, things of that kind, not that I engaged in that sort of conversation every day or every month, but occasionally.
- Q. And who were some of the people who expressed their disappointment over research not being more positive, showing that there was no relationship between smoking and disease?

MR. BELLACOSA: Objection to the form.

MR. KLUGMAN: Objection.

- A. Oh, God, I can't recall specific names. I frequently talked with company people. I just can't pick out names. Even if I gave a list of names, I could not be sure if I was including someone who should not have been included.
- Q. Now, the next section, page ten refers to --
  - A. Excuse me. It was Dick Darrell, I'm

sorry, when I said before I couldn't remember

Dick's last name. He was the number three man in

the hierarchy of Hill & Knowlton at this time and

covered by this memo.

- Q. Page ten, the section of this meeting memo refers to: Disaffected SAB members. Do you see that?
  - A. Yes.

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- Q. It references, it says: "This 'war' contributed to disaffected SAB members." Do you see that?
  - A. Yes.
- Q. And the war they are referring to is in the paragraph prior to that. The dichotomy between fundamental versus applied research, do you see this?
  - MR. BELLACOSA: Object to the form.
  - MR. KLUGMAN: Objection to the form.
  - Q. Do you read this document that way?
    - MR. BELLACOSA: Objection to form.
      - MR. KRISTAL: What is the objectionable

	about the form of that question?
2	MR. BELLACOSA: It is highly improper to
3	be asking a witness about a document, what is in
4	a document, when he has never seen it before and
5	is not copied for it. There is absolutely no
6	foundation for these questions. He is not here
7	to interpret a document that he has never seen.
8	MR. KRISTAL: What does that have to do
9	with the form of the question?
10	MR. BELLACOSA: The form is improper.
11	Asking this witness anything with regard to this
12	document.
13	MR. KRISTAL: That's not my
14	understanding of what the form of the question
15	is.
16	MR. BELLACOSA: You are the one that
17	didn't want speaking objections. There it is.
18	MR. KRISTAL: No. No. That's why I am

asking you. The form of the question usually

goes to it being compound or vague, something

along the lines where the questioner has an

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l	
1	opportunity to rephrase the question.
2	But you just have a general objection
3	to the subject. Whatever your objection is, you
4	have stated it.
5	MR. BELLACOSA: Yes.
6	Q. Is that your understanding of what that
7	is referring to?
8	A. I'm sorry, I have lost you completely.
9	MR. KLUGMAN: Back to war.
10	Q. The phrase this was contributed to
11	disaffected SAB members refers to what in your
12	interpretation of this document?
13	MR. BELLACOSA: Object to the form.
14	A. You know, I really can't comment on
15	that. I did not know there was a war unquote.
16	Q. Did you know at any point in time that
17	any Scientific Advisory Board members felt
18	disaffected?
1 9	MR KLUGMAN. Objection to the form

Yes.

Which ones?

20

A. Paul Kotin.

- Q. Who else?
- A. He really is the only one, because he expressed his disaffection to me.
- Q. Now, one of the reasons given on page eleven in this memo, for the disaffection reads quote --

MR. KLUGMAN: You said eleven. Are we still on ten?

Q. No. We're moving forward. Quote, down at the bottom, where it says third.

MR. KLUGMAN: Well, okay.

Q. "The disaffection might also be due to other excessive lawyer involvement in day-to-day matters. The lawyers reviewed everything written by CTR (but not by SAB); thus, galleys of annual reports were reviewed by lawyers. American once complained about one summary but failed to get it changed. An abstract by Leuchtenberger, however, was apparently revised at the insistence of lawyers, which was done through Hockett, who

1	'leaned' on her."
2	Do you see that?
3	A. Yes.
4	Q. Did anyone ever express to you, any SAE
5	member, that they were disaffected by excessive
6	lawyer involvement in day-to-day matters?
7	MR. KLUGMAN: Objection.
8	A. No.
9	Q. Is it true that the lawyers reviewed
٥ ا	everything written by CTR?
11	MR. KLUGMAN: Objection to the form.
L 2	MR. BELLACOSA: Objection on the form.
L 3	A. I was totally unaware if that was true
L <b>4</b>	or was true.
<b>L</b> 5	Q. Was it true that the galleys of the
L 6	annual reports were reviewed by lawyers?
17	MR. KLUGMAN: Objection to the form.
18	MR. BELLACOSA: Objection to the form.

in a much more meaningful and real way already in

MR. KLUGMAN: We have been through this

this deposition.

19

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1	A. I know that what I wrote for the annual
2	report, aside from the abstracts, the
3	introduction, was reviewed by CTR's counsel. I
•	can't speak to the other. I did not know that
5	was so.
6	Q. To your knowledge, were any abstracts
7	revised at the insistence of lawyers?
8	A. I have no knowledge of that.
9	MR. KRISTAL let me show you Exhibit 61.
.0	(Whereupon, Zahn Deposition
.1	Exhibit No. 61, letter dated October 22, 1992,
. 2	from Allinder to Bixenstine, Decker and Silfen,
. 3	marked.)
4	Q. It is dated October 22, 1992.
. 5	A. I'm going to ask for a break, if I may
. 6	at this moment.
7	VIDEO OPERATOR: Go off the record.
8 .	The time is 1:14.
9	MR. KRISTAL: At any point.
20	(Break.)
21	VIDEO OPERATOR: Back on the record,
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1 | the time is 1:22.

MR. BELLACOSA: For the record, I object to Exhibit 61. Defendants, in particular, defendant R.J. Reynolds, assert that Zahn Exhibit 61 is a privileged document based on the attorney-client privilege, opinion work product doctrine and joint defense common interest privileges.

- Q. The document that was just referred to, I had marked before we went off the record. But if you look for one second at Exhibit 56 I put in front of you, Mr. Pepples letter to Mr. Bowling and Mr. Spears, do you see that?
  - A. Yes.
- Q. If you would turn to the Bates number that ends 067, which I have turned for you.
  - A. Yes, I have that.
- Q. That page is entitled Council for

  Tobacco Research-USA, Inc., and underneath that

  it says Special Projects, correct?
  - MR. KLUGMAN: I'm sorry. I must have

	CONFIDENTIAL UNDER SEAL 877
1	the wrong document.
2	MR. BELLACOSA: He is referring back to
3	56.
4	MR. KLUGMAN: Go ahead.
5	Q. Do you see this?
6	A. Yes.
7	Q. Under Special Projects, Mr. Pepples has
8	four bullet points there, correct?
9	A. Yes.
10	Q. The first one reads: "Research
11	directed at industry problems."
12	Were you aware at the time you were at
13	CTR of any research directed at industry
14	problems?
15	MR. KLUGMAN: Objection to the form.
16	A. No. No. I was not.
17	Q. The next bullet reads: "Witness
18	development objective."
19	Do you see that?
20	A. Yes.
21	Q. Were you aware of any witness
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1	development objective for CTR?
2	MR. KLUGMAN: Objection to form.
3	MR. BELLACOSA: Objection to form.
4	A. No.
5	MR. KLUGMAN: Please give us a chance,
6	Mr. Zahn.
7	Q. The next bullet is "approved by general
8	counsel."
9	Were you aware of any research projects
10	at CTR that had to be approved by general
11	counsel?
12	MR. KLUGMAN: Objection to form.
13	A. No.
14	Q. The last bullet is: "Funded through
15	CTR." Were you aware that Special Projects were
16	funded through CTR?
17	MR. KLUGMAN: Objection to the form.
18	MR. BELLACOSA: Objection to the form.
19	Q. At the time you were a consultant with
20	CTR?
21	A. I think I felt or knew that some of
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1 them were funded through CTR.

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Q. Now, if we could, Exhibit 61 which we marked just before the break. This is a letter on Shook, Hardy & Bacon letterhead. It is from a William Allinder, with a copy to David Hardy, and the letter is addressed to Kim Bixenstine, Esquire; Francis Decker, Esquire; and Thomas Silfen, Esquire.

Do you see that?

- A. Yes.
- Q. Do you know any of those people, any of those three people I mentioned?
- A. The name Decker is familiar. I'm not sure I ever met him. I don't think so. But none of the others, certainly, is familiar to me.
- Q. Now, David Hardy, who is cc.ed on this letter?
  - A. Yes.
- Q. You knew David Hardy was an attorney with Shook, Hardy & Bacon, correct?

MR. KLUGMAN: Objection.

#### CONFIDENTIAL -- UNDER SEAL

١	A.	Yes

1 2

Q. Were you on that committee with him, the Research Committee that Mr. Klugman had showed you some documents about?

MR. KLUGMAN: You may not know it,
Mr. Kristal, but you are misleading the witness
again. It is a different David Hardy.

- Q. How many David Hardys are there?
- A. Looking at the date on this, I thought Dave Hardy had died, and this may be his son. I don't know.
- Q. Now, the letter here references -- let  $\label{eq:constraint} \text{me read it:}$

REDACTED

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	CONFIDENTIAL UNDER SEAL 681		
1	Do you see that?		
2	A. Yes.		
3	Q.		
4	<u> </u>		
5	14 12 10 1		
6			
7			
8	A. Yes. You are reading correctly.		
9	Q.		
10	REDACTED		
11			
12	A. Yes. I leave so.		
13	Q. This letter reads, quoting from the		
14	confidential memo:		
15			
16	REDACTED		
17			
18	Do you see where I am meading from?		
19	A. Yes.		
20	Q. Were you aware of something called the		
21	Ad Hoc Committee?		
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882

1	A. I believe so.
2	Q. And what was the Ad Hoc Committee?
3	A. I recall that it was a committee of
4	lawyers.
5	Q. And who were the members of CTR
6	generally?
7	A. Oh, CTR?
8	Q. Who were the members of CTR, yes.
9	A. They were primarily all the major
10	cigarette companies, with the exception of
11	Liggett & Myers.
12	Q. Okay. Did you have any awareness while
13	you were at CTR of requests from Mr. Hockett
14	regarding how members could best assist CTR with
15	respect to each individual project?
16	MR. KLUGMAN: Objection to the form.
17	MR. BELLACOSA: Object to the form.
18	A. No. None at ail.
19	Q. The next item reads:
20	

### REDACTED

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			CONFIDENTIAL UNDER SEAL 883
1			Do you see that?
2		<b>A</b> .	Yes.
3	ļ	Q.	Do you know if the Ad Hoc Committee
4	ever	make	recommendations for CTR staff members?
5			MR. KLUGMAN: Object to the form.
6		<b>A</b> .	I have no knowledge of that.
7		Q.	The next quote from the first document
8	is:		
9			- ACTED
10			REDACTED
11			
12			Do you see?
13		Α.	Yes.
14		Q.	Were you ever aware that that occurred?
15		. <b>A</b> ,	No.
16	1	Q.	Next quote:
17			
18			TFD (
19			•
20			
21			
		Phone	COURT REPORTING CONCEPTS, INC. Baltimore, Maryland (410) 821-4888 Fax (410) 821-4889
	11		

1	First of all, what is a research
2	protocol?
3	MR. KLUGMAN: Object to the form.
. 4	AT Generally, it is a description of how
5	the scientist proposes to do the research.
6	Q. Okay. Were copies of research
7	protocols ever supplied to lawyers, as far as you
8	know?
9	A. I have no idea.
10	Q.
11	REDACTED
12	
13	
14	Were you a member of the Industry
15	Research Study Committee?
16	A. Yes.
17	Q. And there are quotes in this letter
18	from that memo. Correct?
19	MR. BELLACOSA: Object to the form.
20	MR. KRISTAL: Well, the letter says
21	quotes: And then
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	CONFIDENTIAL UNDER SEAL 886
1	
2	
3	PECAGE
4	
5	Do you see that?
6	A. Yes.
7	Q. Did Sommers ever express to you that
8	there were certain areas that CTR could not
9	fund?
10	MR. KLUGMAN: Objection to the form.
11	A. I don't recall that he did.
12	Q. Did Sommers ever express to you that
13	the independence of CTR had been affected?
14	MR. KLUGMAN: Objection to the form.
15	MR. BELLACOSA: Object to the form.
16	A. No. I don't remember that.
17	Q. The next quote is: Spears
18	S-p-e-a-r-s.
19	A. Yes.

Spears was with Lorillard?

Yes.

20

1	Q. In the Research Department?
2	MR. BELLACOSA: Objection to the form.
3	A. He was the head of their research at
4	that time, I would guess. No, he well, this
5	refers to the 1966. Yes, he was a scientist.
6	Q.
7	
8	REDACTED
9	(CD)
.0	
1	
2	
13	Do you see that?
4	A. Yes.
15	Q. Is it Dr. Spears?
16	A. Yes.
17	Q. Did Dr. Spears ever express his belief
18	to you that CTR is not independent?
19	MR. KLUGMAN: Objection to the form.
20	A. No.
21	Q. Do you know if you were at this April
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1	
1	19, 1979 Industry Research Study Committee
2	referenced here? These quotes are all coming
3	from
4	MR. KLUGMAN: Objection to the form.
5	Q. You are looking in the wrong spot, so
6	I'm not sure you will be answering the question.
7	MR. KLUGMAN: Look at page two.
8	A. Oh, yeah, I'm sorry.
9	Q. These quotes are under the heading
10	
11	REDACTED
12	A. Yes. Yes. I may well have been, but I
13	do not remember.
14	Q. Did you keep notes when you attended
15	the Industry Research Study Committee meetings?
16	A. I just don't remember. I may have. I
17	usually did take notes, if only for my own
18	remembrance. But I just don't recall.
19	Q. Now, the next quote is JCB. Do you see
20	that?
21	A. Yes.

	CONFIDENTIAL UNDER SEAL
1	Q. That is Janet Brown?
2	A. I believe so, yes.
3	Q. She was an attorney?
4	A. Yes.
5	
6	TOTED
7	REDACTED
8	Do you see that?
9	A. Yes.
10	Q. Did Ms. Brown ever express to you her
11	belief that nobody believes CTR is independent?
12	MR. KLUGMAN: Objection to form.
13	MR. BELLACOSA: Objection.
14	A. No.
15	Q. Then it continues:
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# REDACTED

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20 21 Do you see that?

Yes. Α.

Q. - Did anybody at any time while you were with CTR ever express to you an opinion that CTR provided a buffer between companies and problems?

MR. KLUGMAN: Objection to the form.

- No. I don't recall.
- Do you believe that CTR provided a buffer between the tobacco companies and health and research problems?

MR. KLUGMAN: Objection.

- I'm sorry. Health problems.
  - MR. KLUGMAN: Same objection.
- I don't know what others would think about that sort of thing, I never asked anybody about that, and I don't recall anybody ever

1	asking an	opinion as to this concept.
2	out N	Okay.
3		REDACTED
4		REDACT
5		Do you see that?
6	, <b>A</b> .	Yes.
7	Q.	REDACTED
8		REDACTS
9		Did anybody ever express that to you?
10		MR. KLUGMAN: Objection to form.
11	A.	No.
12	Q.	Did you ever hear that at any Industry
13	Research M	seeting?
14		MR. KLUGMAN: Objection to the form.
15	Α.	You mean a meeting of the Industry
16	Research C	Committee?
17	Q.	Yes, sir.
18	Α.	That's possible. I just can't recall.
19	٥.	Okay. Did you ever strike that.
20		Do you have any recollection of
21	attending	this Industry Research meeting of

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December 13, 1978?

A. No. Probably, I'm sure I was there, I just don't remember that.

MR. KLUGMAN: Objection to the form. Again, Mr. Zahn, he asked you what you remember, tell him what you remembered.

MR. KRISTAL: That's exactly what he did.

MR. KLUGMAN: That's exactly what he didn't do.

MR. KRISTAL: That's what makes a horse race.

MR. KLUGMAN: We would have a better horse race, if you showed him document. You like to show him lawyer letters. We'll proceed that way.

Q.

### REDACTED

MR. KLUGMAN: Objection to form.

No. A.

Q.

### REDACTED

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# REDACTED

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Was it ever expressed to you that the SAB was acting as a shield for the tobacco companies?

5

3

MR. KLUGMAN: Objection to the form.

6

MR. BELLACOSA: Objection to form.

7

I don't recall anyone ever saying that.

٤

Q. "Tucker", do you see that there?

9

A. Yes.

10

11

Q. Tucker was with Brown & Williamson, do you know who Tucker was with? I'm sorry. Tucker

12

was with R.J. Reynolds, correct?

13

A. That's the only Tucker I remember, Charlie Tucker, I believe.

14

REDAUTED

16

Did anybody ever express to you the belief that CTR might become an unguided

19

MR. BELLACOSA: Objection to form.

20

A. No.

Q.

missile?

٥.	Next	quote
----	------	-------

### REDACTED

Do you see that?

- A. Yes.
- Q. Did anybody ever express to you that it was important to have the right Scientific Director at CTR in order to, for the CTR not to become an unguided missile?

MR. BELLACOSA: Objection to the form.

MR. KLUGMAN: Objection to form.

- A. No.
  - Q. "Jacob", that's Ed Jacob?
  - A. I would guess so, yeah.

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Do you see that?

Yes.

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Q. Did anybody ever express to you that the Scientific Advisory Board took signs from the industry?

20

	CONFIDENTIAL UNDER SEAL 895
1	MR. BELLACOSA: Objection to the form.
2	MR. KLUGMAN: Objection to form
3	A. No.
4	Q. Next quote:
5	
6	
7	REDAUTED
8	
9	
10	Do you see that?
11	A. Yes.
12	Q. Was there ever any concern expressed to
13	you at any point in time when you consulted with
14	CTR as to regulation by the Food and Drug
15	Administration over the tobacco industry?
16	MR. KLUGMAN: Can I hear that again?
17	MR. KLUGMAN: I don't need the
18	recitation.
19	Q. Was there ever any concern expressed to
20	you at any point in time when you consulted with
21	CTR as to regulation by the Food and Drug
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	Administration over the tobacco industry?
2	MR. KLUGMAN: Objection to form
3	A. I can remember this issue coming
4	me. I can't recall the format. Probably

- A. I can remember this issue coming before me. I can't recall the format. Probably from newspaper clips and stories that I saw about political efforts in Washington to have the FDA assume jurisdiction or control over the cigarette industry. That's about all I can remember in this particular area.
- Q. Do I take it by that you don't recall anything discussed within any committee of CTR that you were on regarding that subject?

MR. KLUGMAN: Objection to form.

A. Not specifically, no. I just don't recall anything.

MR. KRISTAL: Off the record a minute.

VIDEO OPERATOR: Off the record. The time is 1:41.

MR. KRISTAL: Take a two-minute note to review my notes and speak to Craig.

(Break.)

1	VIDEO OPERATOR: Back on the record,
2	the time is 1:42.
3	MR. KLUGMAN: Mr. Zahn, just a few
4	questions, I hope, and I expect. We'll see what
5	happens.
6	MR. KRISTAL: Could you just identify
7	yourself so it is clear?
8	MR. KLUGMAN: Sure. This is Steve
9	Klugman for CTR in Richardson and Reed.
10	EXAMINATION BY MR. KLUGMAN:
11	Q. Let me start by asking you a couple of
12	questions about these committees that we have
13	talked about.
14	Would you take a look at Exhibits 51,
15	52 and 53, which I showed you. These should be
16	in order.
17	A. 53, 52 and 51. Okay.
18	Q. Those relate to a committee that you
19	testified about a little bit.
20	A. Yes.
21	Q. Okay. And what year were the committee
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1	meetings referred to in that memo?
2	MR. KRISTAL: Which memo?
3	MR. KLUGMAN: I'm sorry, in Exhibits
4	51, 52 and 53.
5	A. These are all dated April, May and June
6	of 1974.
7	Q. Okay. Who were the people who were on
8	that committee, according to the memos, or your
9	memory, if you have any additional memory of it.
10	A. No. William Bates, Clifford Goldsmith,
11	Cy Hetsko, I.W. Hughes, Curtis Judge, H.C.
12	Roemer, I'm not sure some of these were members
13	of that committee. William Gardner, William
14	Kloepfer, Horace Kornegay and myself, Leonard
15	Zahn:
16	MR. KRISTAL: Could we have a
17	clarification of what that list was?
18	MR. KLUGMAN: He was reading names
19	you can clarify.
20	A. I'm reading the names at the beginning
21	of the June 17, 1974 letter from David Hardy, and

it is addressed to the people whose names I just listed. The subject matter of the letter is Industry Research Committee.

- Q. Okay. If you will go back to Exhibit No. 51, it refers to many of those same people?
- A. Yes, in the sense that the following individuals will represent their companies, and it is hopeful this committee can have their first meeting promptly. Curtis Judge, Lorillard; Clifford Goldsmith, Philip Morris; H.C. Roemer, Reynolds; Cyril Hetsko, American Brands; I.W. Hughes, Brown & Williamson; William Bates, Liggett & Meyers.

Also, I have asked Dave Hardy, et cetera, to chair this committee. Horace Kornegay and Bill Kloepfer will represent the Tobacco Institute and Dr. Gardner and Leonard Zahn will represent the Council for Tobacco Research.

- Q. And Exhibit 53 refers to a name of that committee, doesn't it?
  - A. Yes, as Industry Research Committee.

- Q. And Exhibit 55?
- A. Let me see if I have it here. That's 56. These are out of order. I don't have any others.
- Q. Take a look at exhibit, you can look at my copy, Exhibit 55 refers to a name of what I think you testified was the same committee.
- A. Yes. This name, this document dated October 3, 1974, refers to the report of the Research Review Committee.
- Q. Okay. Now, Mr. Kristal read to you from a document that has been marked as Zahn Exhibit 61, and he referred to some notations in that document about Bowling notes of Industry Research Study Committee dated 4-19-79, and Bowling notes of Industry Research meeting dated 12-13-78, and he read to you some names of people who are quoted in Zahn Exhibit 61, and those are Yeaman, Shinn, Spears, JCB, which I believe either he said or you suggested was or might be Janet Brown, Brown, Tucker, Jacob, and I asked

you whether those -- and he read to you from two Bowling notes, I may have said this a moment ago, one according to Zahn Exhibit 61, notes dated 4-19-79 and the other one meeting dated 12-13-78,, and I'm asking you whether that is the same time period or a different time period from the committee that you were reflected as being a member of back in '74?

MR. KRISTAL: Objection as to form.

- A. There seems to be a jump of four to five years.
- Q. And are the people that were noted the same or different as between '79 on the one hand and '74 on the other hand?
- A. They seem to be for the most part, almost all of them, as I recollect from your reading, to be different.
- Q. And let me ask you, having those things in mind, whether you have a present memory right now of attending meetings of a committee on this subject in 1979 with people, including

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1	Mr. Yeaman, Mr. Shinn, Dr. Spears, Ms. Brown,
2	Mr. Jacob, I don't know whether it is doctor or
3	Mr. Tucker, people like that, do you remember
4	that as you sit her right now?
5	MR. KRISTAL: Objection.
6	A. No. I do not.
7	Q. Do you know as you sit here right now
8	whether you were a member of that committee that
9	was meeting, I won't say, may have been meeting,
10	Mr. Kristal's questions assumed may have been
11	meeting in 1978 or 1979?
12	MR. KRISTAL: Objection as to form.
13	MR. KLUGMAN: Is there a way I can cure
14	that?
15	A. No.
16	MR. KRISTAL: Cure it anyway you want.
17	MR. KLUGMAN: What's the basis of the
18	objection?
19	MR. KRISTAL: Compound question.
20	MR. KLUGMAN: Let's see if we can break
21	it down? What's the compoundness? I thought it
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1	was one question. If you will tell me what the
2	compoundness was, I will fix it.
3	MR. KRISTAL: I don't need to do
4	anything more than I have done.
5	MR. KLUGMAN: Could I have the question
6	read back?
7	(The record was read by the reporter.)
8	MR. KLUGMAN: What's the compound?
9	MR. KRISTAL: I believe it is a compound
10	question.
11	MR. KLUGMAN: As between what and what?
12	I will try to fix it. That's why we have
12	I will try to fix it. That's why we have objections in these nonparty depositions.
13	objections in these nonparty depositions.
13 14	objections in these nonparty depositions.  MR. KRISTAL: Do what you wish. I'm not
13 14 15	objections in these nonparty depositions.  MR. KRISTAL: Do what you wish. I'm not here to tell you what my objection is so that you
13 14 15	objections in these nonparty depositions.  MR. KRISTAL: Do what you wish. I'm not here to tell you what my objection is so that you can sit here and fix it. I've made an objection.
13 14 15 16	objections in these nonparty depositions.  MR. KRISTAL: Do what you wish. I'm not here to tell you what my objection is so that you can sit here and fix it. I've made an objection.  You think it is an okay question. Go ahead.
13 14 15 16 17	objections in these nonparty depositions.  MR. KRISTAL: Do what you wish. I'm not here to tell you what my objection is so that you can sit here and fix it. I've made an objection.  You think it is an okay question. Go ahead.  Q. Mr. Kristal asked you some questions

referred to terms relating to grants on the one hand and he asked you --

- A. You mean the statement of policy?
- Q. Yes.

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- A. Yes.
- Q. He asked you about differences with contracts. Do you recall, during the years that you provided services to CTR, do you recall whether there were more grants or research contracts entered into by CTR?
- A. My recollection is that throughout the entire period, contracts, as far as I knew, were really just a handful, compared to the number of outright direct research grants.
- Q. Mr. Kristal asked you some questions that were based on quotations in documents about. CTR being independent. I just want to make sure that we understand your view on that point. Some of this may repeat what you said before, and I apologize for that, but we'll try to move as quickly as we can.

Who were the members of TIRC and then
CTR?
MR. KRISTAL: Objection, too leading a
question. I guess that's a form of the
question.
A. As I said before, the chief members,
the ones who paid the bills, were the major
cigarette companies, with the exception of
Liggett & Myers.
Q. So in terms of its membership, was CTR
independent of the tobacco companies?
MR. KRISTAL: Objection.
A. I'm sorry.
Q. In terms of who its members were, was
CTR independent of the tobacco companies or were
they the members?
MR. KRISTAL: Objection.
A. Well, the tobacco companies provided
CTR with the money to run the research program.
Q. And after CTR was incorporated in 1971,
who determined who the directors of CTR would

be?

MR. KRISTAL: Objection as to form.

- A. Well, the directors were members of the sustaining member companies. But the operation of the program was, the research program, was strictly the CTR staff and the Scientific Advisory Board.
  - Q. Is that what you meant by independent?
  - A. Yes. Absolutely.

MR. KRISTAL: Objection as to form.

- A. It was always my understanding from the very beginning and certainly from the very first Scientific Advisory Board meeting I attended, that these guys were really the ones who had most of the say, if not all of the say, in how this thing was going to run.
- Q. CTR had a chairman, at least from time-to-time?
- A. Chairman, president, usually one person.
  - Q. And were some of those chairmen former

employees	of	tobacco	companies?
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A. Everyone of them was, yes.

MR. KLUGMAN: Let me ask you to take a look at exhibit, what I have marked as Zahn Exhibit 62.

(Whereupon, Zahn Deposition Exhibit No. 62, press release, January 26, 1971, marked.)

- Q. Do you recognize Zahn Exhibit 62, and I should state for the record, it is a collection of three documents, one with No. 11314686, that is a one-page document. Another one-page document bearing No. 11315754, and the third is a one-page document bearing CTR public statement, STMT period, 001479.
- A. Yes. I don't remember these, but I certainly recognize them as coming from my company.
- Q. Those are press releases that you prepared?
  - A. Yes.

Q.	And does	each of	those pro	ss releases,
please re	eview then	n one at a	time, i	f you need to
announce	the appoi	intment of	a new ex	ecutive for
CTR?				
<b>A</b> .	Yes.			

- Q. And does each of them disclose that that executive is a long time former employee of a tobacco company?
  - A. Yes.

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- Q. Was there any secret about that relationship so far as you were concerned?
- A. Never. Here it is in the first sentence of the release, here it is in the first sentence of the release, they are all, they all identify the in coming chief executive as a former tobacco company employee.
- Q. Was there any secret as far as you were concerned about who the members or directors of CTR were?
  - A. Oh, no.
  - Q. Anybody ever tell you that that is

something we shouldn't tell the world about? Not at all, no. Take a look, if you would, at what's been marked as Zahn Exhibit 50. I just want to make sure again that we are clear on where you are on this. As I told you before, this is a document from the files of Brown & Williamson. MR. KRISTAL: Objection. Q. I will represent to you that there is no copy of this document today in the files of CTR. MR. KRISTAL: Objection to the leading of the witness, the coaching of the witness. Let me ask you whether, whether your letterhead, whether this is on your letterhead or any paper you recognize as coming from your office?

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A. No.

Q. Does it have your name anywhere?

No. It is on a plain piece of paper.

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A.

1	Q. Does it have the name of anyone from
2	CTR on it anywhere?
3	A. Not that I can
4	Q. Or initials or any kind of
5	abbreviation?
6	A. Not that I can see. I don't know what
7	WK, those are the initials of William
8	Kloepfer.
9	Q. Was William Kloepfer ever an employee
10	of CTR?
11	A. No.
12	Q. Was he ever associated with CTR?
13	A. No.
14	Q. Who was he?
15	A. He was an employee of the Tobacco
16	Institute.
17	Q. Do you remember preparing this
18	document?
19	A. No. I do not.
20	Q. Was it your practice to prepare
21	documents like this for CTR, that is documents
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suggesting what statement to make when asked for comment?

MR. KRISTAL: Objection.

- A. I would do so on occasion.
- Q. Did you prepare documents like this that you can recall about comments on a particular researcher, that you can remember?
- A. Yes. I prepared one in the Homburger matter in advance and I'm trying to think, there certainly must have been other major developments of that kind through the 25 years I represented the council. I must have done, certainly, a couple of them.
- Q. Did you prepare them then in the instance of major developments?
  - A. Only in that instance.
- Q. And do you recall anything referred to in Exhibit 50 as having been to you a major development of that sort?
- A. I don't even recall what the piece was, in the New England Journal. I know the author

1 who is Freedman was a grantee.

- Q. Of CTR?
- A. Yes.

Q. Do you have any information, not asking you to assume or speculate, do you have any information as to whether this is a document that you or anyone else prepared for CTR?

MR. KRISTAL: Objection.

- A. No.
- Q. Let's see if we can wind up again with Dr. Homburger. Mr. Kristal asked you some questions about your views about free speech and things of that sort. In that context, I want to ask you going back to Dr. Homburger's scheduled press conference in April, 1974 in Atlantic City. Who was to have sponsored that -- well, let me strike that and start again. Referring back to Dr. Homburger's scheduled press conference in April, 1974, who was to have sponsored that press conference?

A. The pathologists organization, ASEP.

- 1	
1	Q. Was that the organization Mrs. Grave
2	was affiliated with?
3	A. Yes.
4	Q. Was this a matter of Dr. Homburger
5	saying I'm having a press conference and inviting
6	the press?
7	A. Well, it would have been his making a
8	request to the organization for it to hold a
9	press conference for him.
10	Q. And as far as you understood, who had
11	the right or the authority to decide whether that
12	press conference would go forward?
13	MR. KRISTAL: Objection, foundation?
14	A. The organization.
15	Q. Did you have that understanding back in
16	1974?
17	A. Always works that way.
18	Q. And who made the decision as to whether
19	that press conference would go forward?
2 1	MP KRISTAL Objection

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A. The organization.

21

I	Q. Did you contribute or did you make an
	effort to contribute to what the organization's
	Q. Did you contribute or did you make an effort to contribute to what the organization's decision would be?

- A. I provided, certainly, information to Mrs. Graves with the request that her board get the same information.
- Q. And to the best of your knowledge then, was all the information that you provided to Mrs. Graves truthful?
  - A. Absolutely.
- Q. Was this information about Dr. Homburger and the circumstances surrounding his research?
  - A. Yes.

- Q. And to the best of your knowledge today, was all the information that you provided to Mrs. Graves back in 1974 about Dr. Homburger and his research truthful and accurate?
  - A. Absolutely.

MR. KLUGMAN: I have no further questions.

l li	
1	MR. KRISTAL: I have one or two. This
2	is Jerry Kristal.
3	VIDEO OPERATOR: Excuse me,
4	Mr. Kristal, I'm out of tape. Hold on a second.
5	(Discussion off the record.)
6	VIDEO OPERATOR: Back on the record,
7	the time is 2:03.
8	EXAMINATION BY MR. KRISTAL:
9	Q. Mr. Zahn, this is Jerry Kristal. Zahn
. 0	50, regarding the Freedman paper that has the
.1	initials on the upper right-hand corner, WK, do
. 2	you see that?
. 3	A. Yes.
4	Q. You have sent memos that you have
. 5	written in your capacity as consultant to the
L 6	Council for Tobacco Research to WK, have you
17	not?
8 1	MR. KLUGMAN: Objection to the form.
9	A. Yeah, I believe so.
2 0	Q. So that it would not be unusual to see
21	a memo that you have written as a consultant to

- [	
1	CTR being copied to WK, correct?
2	MR. KLUGMAN: Objection to form.
3	A. No.
4	Q. For example, if you look at Exhibit 41
5	that Mr. Klugman showed you the morning, the
6	April 22, 1974 memo from you to Mr. Hoyt
7	regarding a meeting with Mr. Homburger, in fact,
8	in the upper right-hand corner, a copy was sent
9	to WK, correct?
10	A. Yes.
11	MR. KRISTAL: That's all I have. Thank
12	you.
13	THE WITNESS: We are done?
14	VIDEO OPERATOR: That concludes today's
15	deposition, the time is 2:04.
16	(Examination concluded 2:04 p.m.)
17	
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CERTIFICATE OF DEPONENT

1 2

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions of corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

LEONARD ZAHN

## STATE OF MARYLAND SS:

I, E. D. SMITH, RPR-CRR, a Notary Public of the State of Maryland, do hereby certify that the within named, LEONARD ZAHN, personally appeared before me at the time and place herein set out, and after having been duly sworn by me, was interrogated by counsel.

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that the stipulations contained herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 13 day of January, 1998.

My commission expires

November 1, 2002

Notary Public



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